

No. 45465-3-II  
COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II  
2014 JUL 25 PM 3:32  
STATE OF WASHINGTON  
CLERK

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In re the Guardianship of:

KEIKO DECKER.

An Incapacitated Person.

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GUARDIAN MAURICE LAUFER'S RESPONSE BRIEF

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GORDON THOMAS HONEYWELL LLP  
Margaret Y. Archer, WSBA No. 21224  
Eileen S. Peterson, WSBA No. 17405  
Attorneys for Maurice Laufer, Guardian

Suite 2100  
1201 Pacific Avenue  
Tacoma, WA 98401-1157  
(253) 620-6500

[100090363]

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## **I. INTRODUCTION**

This appeal involves Keiko Decker, an elderly Japanese woman who was adjudicated incapacitated pursuant to Washington's Guardianship statute (chapter 11.88 RCW) because she exhibits symptoms of dementia, has difficulty managing her personal affairs and is vulnerable to financial exploitation. Decker continues to live in her home, but the court appointed a Limited Guardian, accountant Maurice Laufer, to protect and assist Decker in managing financial and personal matters. Ultimately, the adjudication was without contest; however, the appointment followed a petition initiated by Adult Protective Services ("APS"), a division of Washington's Department of Social and Health Services ("DSHS").

This appeal does not challenge the court order adjudicating Decker incapacitated, nor does it contest the necessity for a Guardian to protect her from exploitation. Instead, the appeal challenges the decision by Pierce County Superior Court Commissioner Mary Dicke (and affirmed by Superior Court Judge Jack Nevin) setting a reasonable fee for the services rendered by appellant Daniel Quick as Decker's independent counsel.

Though Keiko Decker ultimately consented to a Guardian through an Agreed Order and without a trial, she originally resisted. At the outset, she expressed her opposition to the Guardian ad Litem ("GAL") who was

appointed by the court to investigate and make recommendations as to whether Decker's circumstances necessitated a guardian. Based on her resistance to and apparent lack of understanding of the proceeding, the GAL determined that it was in Decker's best interest to be represented by independent counsel, preferably someone who speaks Japanese and is knowledgeable of Japanese culture. Daniel Quick represented that he had the necessary qualifications and that he was willing to serve as her attorney if successfully appointed by the court.

The court oversight imposed by the Guardianship statute extends to those representing a person alleged to be incapacitated. Specifically, RCW 11.88.045(2) directs that, during the pendency of any guardianship, any attorney purporting to represent a person alleged to be incapacitated must petition to be appointed to represent the alleged incapacitated person. It further provides that fees for such representation shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

The GAL thus petitioned for and received a court order appointing Quick as Decker's independent counsel. The order appointing Quick set terms for his representation. It initially limited Quick's representation to 10 hours at a rate of \$250 per hour. The order further provided that additional hours required advance court approval.

One month later, Quick prepared and presented to the court an Agreed Fee Order to obtain additional authorization. Quick represented to the court that, at his client's instruction, he intended to "vigorously defend the guardianship," and that he required "an additional 40 hours to prepare for the final guardianship hearing/trial and/or to negotiate a lesser restrictive alternative to the guardianship." (CP 422.) The court accepted and entered the Agreed Fee Order. The combined orders provided Quick with authority for a total of 50 hours at a rate of \$250 per hour (\$12,500 total). The Agreed Fee Order, as drafted by Quick, also expressly required prior court approval for additional authority and court approval for payment of fees. The Agreed Fee Order directs:

Independent legal counsel shall be paid at private expense, with fees for representation subject to the Court's approval pursuant to RCW 11.92.180 and SPR 98.12. Legal counsel for Keiko Decker shall bill at the rate of \$250 per hour, and shall have further forty (40) hours of authority to represent Ms. Decker.

Independent legal counsel shall not spend more than forty (40) hours representing Ms. Decker without prior court approval. (Emphasis added.)

(CP 423-24.) The two court orders collectively setting the terms of Quick's representation are attached as Appendices A and B.

Remarkably, without prior approval and in direct contravention to the court orders, Quick incurred, invoiced and received payment for attorney fees that grossly exceed the \$12,500 authorized. Unbeknownst to



the GAL, APS and the court, Quick invoiced and received payment of \$118,110. After the court deemed Decker incapacitated, the Guardian was appointed and Quick was discharged, Quick petitioned the court for approval of \$135,248 in fees, \$118,110 of which, remarkably, had already been invoiced to and collected from Decker.

Commissioner Dicke, who previously presided over the only two dispositive motions filed in this guardianship, entered the order adjudicating Decker incapacitated and was well-acquainted with the matter, determined that Quick's fees were excessive. Based on review of the billing records, the court-approved hourly rate (\$250), knowledge of the specific guardianship proceeding and extensive experience with guardianship matters, Commissioner Dicke determined that \$30,000 was a reasonable fee for this matter that never went to trial. Despite that Quick failed to obtain prior approval, the Commissioner still approved additional fees, more than doubling the previously authorized hours that Quick represented would allow him to "prepare for the final guardianship hearing/trial." (CP 422.)

Despite that Quick (1) did not contest the original order subjecting his hours and fees to court review, (2) prepared and presented the court's second order requiring court approval of fees and limiting his representation to 50 total hours absent prior court approval, and (3)

consented to the final guardianship order that required submission of a fee petition and court review and approval of his fees, Quick now claims that the limitations in the orders are “at odds” with his statutory duties and the court had no authority to review his fees incurred representing Decker.

Though he did not raise the argument to Commissioner Dicke or Judge Nevin, Quick now claims that, Division I’s construction of the Guardianship statute in *In re Guardianship of Beecher*<sup>1</sup> is dispositive, and the court was without authority to review or reduce his fees. Quick’s new argument lacks merit. *Beecher* does not apply because it addressed attorney fees charged to an alleged incapacitated person who, unlike Keiko Decker, was never adjudicated incapacitated. Moreover, unlike here, the attorney in *Beecher* did not consent to and invite court review through a prior Agreed Fee Order.

Quick also argues that the fee reduction must be remanded because the Commissioner abused its discretion and did not enter findings of fact and conclusions of law. A remand is not required. The Commissioner sufficiently stated in the oral ruling the well-reasoned basis for reducing Quick’s excessive fee. The record is more than adequate for appellate review and affirmation of the fee determination.

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<sup>1</sup> 130 Wn. App. 66, 121 P.3d 743 (2005).

## **II. ISSUES**

1. Did the trial court have authority to review and reduce the fees Quick charged defending Decker in the guardianship, where Decker was ultimately adjudicated incapacitated and Quick voluntarily consented to court review of his fees through a prior agreed court order?

2. Did the trial court abuse its discretion when it reduced Quick's fee from \$135,248 to \$30,000, where Quick's client was vulnerable to financial exploitation; Quick failed to obtain advance court approval as required by applicable court orders, the fees exceeded (by eleven times) Quick's authority (50 hours at \$12,500), which authority was based on Quick's representation as to the amount necessary to prepare and litigate Decker's defense at trial; the fees were grossly in excess of those typically charged in guardianship proceedings; and the matter never went to trial?

3. Did the trial court provide in its oral decision an adequate record of the basis of its fee determination to allow for appellate review and affirmation of that determination?

4. Is it appropriate for the Limited Guardian to defend Quick's appeal, where \$105,000 (\$135,248 - \$30,000) of the incapacitated person's estate is at issue, the Limited Guardian has a legal duty to protect and safeguard Decker's assets and the trial court ordered him to defend?

### III. OVERVIEW ON GUARDIANSHIP PROCEEDINGS

Courts appoint guardians to assist and protect people with cognitive disabilities who are unable to manage personal or financial matters. Referred to as “incapacitated persons” under the law, they are often vulnerable to financial exploitation, medical neglect, homelessness, and other kinds of harm. Guardians can dramatically reduce the likelihood of such problems by managing finances, arranging for health care, organizing living arrangements, and assisting in other ways.

*Report of the Guardianship Task Force to the WSBA Elder Law Section Executive Committee* (August 2009) at p. 1. Guardianship proceedings are unique and differ greatly from other civil litigation. Accordingly, a brief overview of the statutory framework governing guardianship proceedings may prove helpful in evaluating the procedural history of this case.

The process through which a guardian may be appointed is set forth in chapter 11.88 RCW. The statute was enacted with the intent to protect and provide assistance in meeting basic needs of those with incapacities, yet restrict autonomy and liberty only to the minimum extent necessary to provide for the incapacitated person’s health and safety and adequately manage her financial affairs. RCW 11.88.005. “Although governed by statute, guardianships are equitable creatures of the courts and it is the court that retains ultimate responsibility for protecting the ward’s person and estate.” *In re Guardianship of Lamb*, 173 Wn.2d 173, 184, 265 P.3d 876 (2011), *quoting In re Guardianship of Hallauer*, 44

Wn. App. 795, 797, 923 P.2d 1161 (1986).

In order to appoint a guardian, a court or jury must find the person incapacitated. RCW 11.88.010; .045. A determination of incapacity is a legal, not a medical decision, based upon demonstration of management insufficiencies over time. RCW 11.88.010(1)(c). “[A] person may be deemed incapacitated as to person when the superior court determines the individual has significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.” RCW 11.88.010(1)(a) “[A] person may be deemed incapacitated as to the person’s estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property or financial affairs.” RCW 11.88.010(1)(b). A guardianship must be based upon findings as to the capacities, condition and needs of the alleged incapacitated person and cannot be based solely upon agreement of the parties. RCW 11.88.095.

The guardianship process is initiated by a petition. RCW 11.88.030. The petitioner in a guardianship proceeding does not play the same role as a plaintiff in more typical civil litigation, but is more limited. “The guardianship petitioner’s role is essentially to alert the trial court of the potential need and reasons for a guardianship of an incapacitated

person and to respond to inquiries from the trial court.”<sup>2</sup> *In re Guardianship of Matthews*, 156 Wn. App. 201, 209-10, 232 P.3d 1140 (2010). *See also*, RCW 11.88.030. The petitioner must file “in good faith and upon reasonable basis”<sup>3</sup> and provide certain statutorily required information, but once the trial court accepts a guardianship petition for review, the petitioner’s role in the process essentially ends. *Id.*

The real party in interest in a guardianship proceeding is the alleged incapacitated person and it is the trial court’s duty to ensure that her interests are protected. *In re Guardianship of Matthews*, 156 Wn. App. at 210. To assist in performing its duty, the trial court has the power to and in nearly all cases will appoint a Guardian ad Litem. *Id.* RCW 11.88.010. The GAL is not an agent of the petitioner. RCW 11.88.090(3)(a). Rather, the GAL is an agent of the court with a duty to protect the interests of the alleged incapacitated person. *In re Guardianship of Matthews*, 156 Wn. App. at pp. 210-11. The GAL is required to investigate, gather and evaluate evidence and report and make recommendations to the court. RCW 11.88.090. Relevant to this appeal, the GAL is statutorily required to (1) meet with the alleged incapacitated

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<sup>2</sup> The Attorney General may petition for the appointment of a guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to serve. RCW 11.88.030(2).

<sup>3</sup> RCW 11.88.030(1).

person to explain the substance of the petition, the process and the alleged incapacitated person's rights; (2) investigate and evaluate the alleged incapacitated person's condition and circumstances; (3) obtain an adequate written report from a physician, psychologist or registered nurse practitioner based on a personal examination performed by the reporting medical professional within 30 days of the report; and (4) make written recommendations to the court based upon evidence gathered, including the requisite medical report. RCW 11.88.090(5); 11.88.045(4).

An alleged incapacitated person is entitled to contest the guardianship and to testify and present evidence to a jury. RCW 11.88.045. The alleged incapacitated person also has a right to be represented by willing counsel of her choosing. *Id.* The independent counsel's role is different from the GAL, who is expected to promote the "best interests" of the alleged incapacitated person rather than her "expressed preferences." Independent counsel is statutorily directed to act as an advocate for the client and not substitute his own judgment for that of the client on the subject of what may be in the client's best interests. RCW 11.88.045(1)(b). Nonetheless, independent counsel is subject to court oversight. RCW 11.88.045(2) provides:

During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to

represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

RCW 11.92.180 allows such compensation for services “as the court shall deem just and reasonable.”

If the petition is resolved with an adjudication of incapacity, the court will appoint a qualified guardian or limited guardian, and provide the guardian with express direction regarding his duties and responsibilities in addition to those statutorily imposed. *See* RCW 11.88.010, .095, .100. *See also* chapter 11.92 RCW. An appointed Guardian is an officer of and directly responsible to the court. Through the guardian, the court seeks to protect the incapacitated interests, but the court is the superior guardian. *In re Guardianship of Matthews*, 156 Wn. App. at 211; *Seattle-First Natl’ Bank v. Brommers*, 89 Wn.2d 190, 200, 570 P.2d 1035 (1977.)

#### **IV. COUNTERSTATEMENT OF THE CASE**

##### **A. The Guardianship Proceeding For Keiko Decker – Adjudication Of Her Incapacity And The Appointment Of A Limited Guardian.**

###### **1. APS filed a petition for guardianship.**

Keiko Decker was born in July 1932 and is now 82 years old. (CP 13.) On November 15, 2010, APS received a report that Decker was neglecting herself and appeared to be vulnerable to financial exploitation. (CP 18.) Unfortunately, Decker’s husband of 45 years, a retired Air Force



Lieutenant Colonel upon whom she relied to address financial matters, died a year earlier, in October 2009. She was struggling on her own. (CP 18, 20.) The report to APS was made after Decker had paid over \$63,000 for landscaping work and a sprinkler system that appeared to be defective and, further, she had been exhibiting paranoid behavior. (CP 18, 20.)

An APS social worker met with Decker and independently investigated the report. (CP 18-20.) The social worker learned that Decker had been diagnosed with dementia and Decker's medical records confirmed that she had been exhibiting paranoid behavior. (CP 18.) Decker's primary care physician opined that Decker needs assistance of a guardian to make medical, personal and financial decisions. (CP 18-19.) Though Decker admitted that she had memory issues and was having difficulties managing her affairs, she refused assistance. (CP 19.)

The social worker concluded that Decker did not have adequate support in place necessary to manage her financial and medical affairs and, without support, Decker was vulnerable to self-neglect and financial exploitation. (CP 20.) On February 23, 2011, APS filed a Petition for Guardianship of Decker's person and estate and requested that a Guardian ad Litem be appointed from the court's registry. (CP 13-17.)

**2. The court appointed a GAL and independent counsel for Decker.**

Based on the petition, an Order Appointing Guardian Ad Litem was entered and Stephen DeVoght was appointed GAL. (CP 21-26.) The GAL was directed to meet with Decker, explain the proceeding and her rights, investigate the issues raised in the petition and, report back to the court. (*Id.*) The court authorized compensation to the GAL from Decker's estate for investigation not to exceed 10 hours. (CP 22.) Additional hours and payment of compensation required advanced court approval. (*Id.*)

The GAL was immediately presented with two challenges in this matter. Decker is Japanese and has difficulty communicating in and understanding English. Decker was also uncooperative and was refusing to meet with the GAL. (CP 27.) The GAL thus believed it was in Decker's best interest for the court to appoint an attorney to represent her in the guardianship proceeding, preferably an attorney who speaks Japanese and is familiar with Japanese culture. (*Id.*)

The GAL was not aware of any attorney in the Pierce County registry that had such qualifications. He recommended appointment of Daniel Quick, a Seattle attorney who spoke some Japanese and was willing to serve (though he had no prior relationship with Decker) and the GAL believed to be qualified. (CP 27-31.) As required by RCW

11.88.045(2), a petition to appoint Quick as independent counsel was presented. (CP 27-31.) On June 22, 2011, the court entered an Order Appointing Independent Legal Counsel for Alleged Incapacitated Person (“Initial Fee Order”) and, pursuant to that order, Quick was authorized to serve and began serving as Decker’s independent counsel in the guardianship proceeding. (CP 32-33.)

Pursuant to the Initial Fee Order, Quick was authorized to bill at a rate of \$250 per hour and was also granted 10 hours of authority to represent Decker. The Initial Fee Order directed that Quick could not provide representation in excess of 10 hours without prior court approval. (CP 32.) After meeting with Decker and ascertaining that she desired Quick to “vigorously contest the guardianship hearing,” Quick requested authority for “an additional 40 hours to prepare the final guardianship hearing/trial and/or negotiate a lesser restrictive alternative to guardianship.” (CP 422.) Through an Agreed Order Authorizing Additional Hours for Legal Counsel of Alleged Incapacitated Person entered July 29, 2011 (“Agreed Fee Order”), which Quick drafted, the court approved the additional 40 hours of authority. The Agreed Fee Order also provided, however, that “[i]ndependent counsel shall not spend more than forty (40) hours representing Ms. Decker without prior court approval.” (CP 422-23.)

**3. The guardianship proceeding was stalled while the parties awaited completion of necessary medical evaluations and reports.**

Ultimately, Keiko Decker was adjudicated incapacitated and a Limited Guardian was appointed. No trial was required and an Agreed Guardianship Order adjudicating her incapacitated was entered without contest. (CP 84-96.) The order was not entered, however, until May 7, 2013, more than two years after APS filed the petition.

The delay was largely the result of challenges presented by the language barrier, difficulties in getting Decker to cooperate and delays in receiving requisite medical reports. As required, the GAL requested a medical report in April 2011 and received a report in June 2011. (CP 34, 450. *See also* June 10, 2011 Medical Report of Dr. Roger Stegman, MD, included with Sealed Personal Health Records filed on May 9, 2012.) Unfortunately, the report was based upon a December 2010 examination and the report did not, therefore, meet the statutory requirement that it be prepared within 30 days of the examination. (*Id.*; RCW 11.88.045(4).) Another examination and another medical report were required.

Recall that the GAL sought and obtained appointment of Quick in June 2011 because Decker opposed the guardianship, but also because she refused to cooperate and meet with the GAL. (CP 27, 450.) With the assistance of counsel, the GAL was finally able to meet with Decker on

August 4, 2011 and September 14, 2011. At the September meeting Decker agreed to visit her doctor for the purpose of obtaining the requisite updated medical report. (CP 34.) This was progress, since GAL interviews and an updated medical report were prerequisites for a GAL recommendation to the court. (CP 34-35.)

After a follow-up visit with her primary physician on October 25, 2011, Decker was referred to neuropsychologist Dr. Edwin Hill for further evaluation. Decker was scheduled to meet with Dr. Hill on December 20, 2011, but canceled at the last minute. Her appointment was rescheduled and she met with Dr. Hill on January 24, 2012. At the appointment, however, following the initial diagnostic evaluation, Decker was reluctant to undergo neuropsychological testing. As a result the testing was canceled and rescheduled for February 8, 2012. Decker attended the February 8 appointment, but was unable to complete the testing. Decker was scheduled to and did complete the neuropsychological test on February 10, 2012. (*See* March 2, 2012 Medical Report of Dr. Edwin Hill, PhD, at page 1 included with Sealed Personal Health Records files on May 9, 2012.) Dr. Hill completed his report on March 2, 2012. (*Id.*)

Dr. Hill reported that, it was difficult to conclusively determine whether Decker was exhibiting cognitive inefficiency and impairment due to dementia, or whether it was associated with English comprehension

difficulties and anxiety – none of the test instruments used were in Japanese. Nonetheless, Dr. Hill “strongly suspected” that Decker does have some dementia based on several identifiable behaviors and responses to the testing. (*Id.* at p. 10.) Dr. Hill further reported that the results of the neuropsychological evaluation cast doubts on Decker’s capabilities to be fully independent in the management of her personal, medical, legal and financial affairs. (*Id.* at p. 11.) He reported that Decker was refusing to take medications required to address significant health issues and extraordinary efforts were required to get Decker to attend her scheduled appointments. (*Id.*). He reported that Decker had little insight into her own strengths and weaknesses. (*Id.* at p. 10.)

Based on the combined medical reports of Dr. Stegman and Dr. Hill, as well as his own investigation, which included interviews with Decker and others who know her, the GAL formally recommended on May 9, 2012 that the court appoint a certified professional guardian as limited guardian of Decker’s person and estate. (CP 40; Sealed Confidential Report of GAL filed on May 9, 2012.)

The GAL noted that Decker executed a durable power of attorney on December 20, 2012, which appointed Quick as Decker’s attorney-in-fact. (CP 40, 469-74.) The GAL reported that an appropriate power of attorney may be a reasonable alternative to a guardianship, but such

alternative would require “substantial court oversight” and, would need to ensure that it would be recognized by the Social Security Administration and Department of Veteran’s Affairs, since Decker received benefits from both agencies. (CP 39-40.) Ultimately, however, the GAL recommended appointment of a limited guardian. (CP 40. *See also* Sealed Confidential Report of GAL filed on May 9, 2012.)

By the time the GAL recommendation was filed with the court, little had occurred in the court proceeding. Except for a mandatory status conference held on September 29, 2011, status conferences had been continued pending receipt of the requisite medical report; a trial date had not been set. (CP 34, 454-47.) Quick served APS with a single written discovery request on April 4, 2012 and filed a jury demand on the same day. (CP 275, 285.) APS responded to the discovery request on May 4, 2012, which response included the production of the entire APS file comprised of over 500 pages.<sup>4</sup> (CP 275, 284, 286.) However, other than interim reports of the GAL, and the petition to appoint Quick as independent counsel, and continuance requests, no substantive pleadings had been presented the court for consideration prior to the May 9, 2012

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<sup>4</sup> There was some additional communication between Quick and APS regarding supplementation of APS’ response, which APS did. (*See* CP 275, 298-302, 288-297.) There was no other discovery, however. No depositions, no additional written discovery requests and no motions to compel on the first discovery request.

GAL report. (CP 34-37, 449-451, 454-57.)

**4. APS moved to dismiss its petition in favor of a lesser restrictive alternative to aid Decker, but the court questioned Decker's capacity and denied the request.**

Based upon the GAL and medical reports filed, pursuant to RCW 11.88.090, APS filed a motion on June 8, 2012 for court approval of the lesser restrictive alternative of a durable power of attorney in lieu of guardianship and to dismiss its petition, without prejudice. (CP 44-51, 467-474.) APS believed that Dr. Hill's report evidenced improvement, but that Decker still required some assistance managing financial affairs. APS believed that an appropriate power of attorney may provide a sufficient means to meet Decker's needs. (*Id.*)

APS advised the court, however, that the proposed lesser restrictive alternative would require that the designated successor attorney-in-fact, certified professional guardian Glenda Voller, to replace Quick as attorney-in-fact. (CP 47.) APS explained:

[T]he Durable Power of Attorney Ms. Decker executed naming Mr. Quick as attorney-in-fact is problematic. Mr. Quick is acting in two, conflicting capacities, both as client (as Ms. Decker's attorney-in-fact) *and as his own* legal counsel. As attorney-in-fact, Mr. Quick reviews and approves his own fees as lawyer. This creates a conflict or at least the appearance of a conflict which is inconsistent with Mr. Quick's fiduciary duties. *See Bryant v. Bryant*, 125 Wn.2d 113, 118, 882 P.2d 169 (1994) (an attorney-in-fact is a fiduciary to the principal, is bound to act with the



utmost good faith and loyalty, and must avoid any possible conflict of interest with his or her client).  
(Italics in original.)

(CP 47.) Since Quick had been designated attorney-in-fact on December 20, 2011, six months prior to APS' motion, APS also requested Quick to provide an accounting. (CP47-48.)

Remarkably, on Decker's behalf, Quick opposed the motion, which if approved, would have dismissed the action without an adjudication of incapacity and without a guardian. The opposition was comprised of a short, seven-page memorandum containing no citations to case law and a three-page attorney declaration with attachments. (CP 52-59, 475-77.) Quick opposed his replacement as attorney-in fact.<sup>5</sup> (CP 53.) If replaced by the successor attorney-in-fact, Quick made the self-serving request to be "relieved of any liability relating to the existing DPOA dated and recorded on December 20, 2011." (CP 54.)

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<sup>5</sup> Quick comments on APS' request to remove him as attorney-in-fact at page 12 of his opening brief:

The apparent point of APS's effort was to replace Mr. Quick as Mrs. Decker's attorney-in-fact, which would remove Mrs. Decker from personally giving directions to Mr. Quick. It would thus excise from the proceedings the independent counsel who was acting at Mrs. Decker's personal express behest to which she was entitled under RCW 11.88.045 and the constitutions, as opposed to some third party's notion of what is in her best interest.

Quick's comments indicate that the intent was for the execution of the durable power of attorney to be in form only without implementation or effect – leaving Decker with no independent oversight of significant financial decisions – or that Quick wanted control over decision making. Either way, it would authorize her legal counsel to assess and potentially substitute her decision-making with his own decisions.

On June 18, 2012, Commissioner Mary Dicke heard and denied APS' motion to dismiss with imposition of a less restrictive alternative. (CP 67-68, 303-320.) Commissioner Dicke, who has a duty to protect the interests of the alleged incapacitated person, expressed to the parties that the neuropsychologist's report did not provide her with confidence that dismissal of the action was appropriate and also caused her to question whether Decker had capacity to execute the power of attorney. (CP 309.) The Commissioner instructed: "I need medical documentation that I should be accepting it as a less restrictive alternative." (*Id.*)

I'm not sure what alternative we have for testing in a culturally sensitive way, if there can be like an interpreter to help her do the testing.

But to just dismiss a case with someone that has substantial impairments because she objects to the guardianship without, I guess, good evidence that she's capable of executing the durable power of attorney doesn't give me much – I can't do it.

(CP 310-11.)

[W]hen I read the medical psychological report, it says patient has cognitive dysfunction that does not permit her to manage finances, needs a guardian to help manage finances.

(CP 314.) The Commissioner denied the motion and instructed: "I do think that a second evaluation that's a bit more culturally sensitive has to occur in order for everyone to have a better sense as to whether this power of attorney might be appropriate as a less restrictive alternative." (CP 317.)

With the court's instruction that the guardianship proceeding should continue, the GAL attempted to proceed with further investigation. He requested agreement for additional authority (hours) to conduct that investigation and also attempted to arrange a follow-up medical examination to address Commissioner's Dicke's concerns. (CP 493.) Quick objected, so the GAL petitioned the court for formal instruction on how to proceed. (CP 493-94.) Commissioner Dicke heard the request on August 17, 2012, and authorized the GAL ten additional hours for further investigation to "determine capacity of Ms. Decker at the time she executed her current DPOA either by additional medical exam or a follow up report by her primary care physician." (CP 496.).

**5. Decker moved to dismiss, alleging that APS failed to actively "prosecute" the petition.**

Despite Commissioner Dicke's ruling that the guardianship proceeding should continue and that further investigation of Decker's capacity is appropriate, on August 15, 2012, Quick moved to dismiss the guardianship petition. The motion was not founded on substantive grounds, but was based upon Civil Rule 41(b)(1) and asserted that the "Department had allowed this case to languish for 1½ years" and that the petition should thus be dismissed for "want of prosecution, inexcusable neglect and substantial delay." (CP 78.)

Of course, as noted earlier, APS' role in the case as guardianship petitioner is not that of a typical plaintiff. Its role is "to alert the trial court of the potential need and reasons for a guardianship of an incapacitated person and to respond to inquiries from the trial court." *In re Guardianship of Matthews, supra*, 156 Wn. App. at 209-10. Moreover, unlike in other civil litigation, the court has a duty to protect the real party in interest – the alleged incapacitated person. *Id.* Finally, the motion failed to acknowledge that much of the delay was precipitated by the difficulties in getting Decker to complete the necessary medical examinations, which medical examinations (and related reports) were prerequisites for the GAL to complete his report and recommendation to the court. Commissioner Dicke heard and denied the motion on August 27, 2012. (CP82.)

Quick moved to revise the Commissioner's orders denying both requests to dismiss. The motions were never heard, however, because Quick failed to properly confirm the hearings. (CP 275-76, 322-23, 517.)

**6. APS' petition ultimately resulted in the appointment of a limited guardian for Decker's person and estate.**

The matter was set for trial on May 29, 2013 (CP 498), but no trial was required. The GAL, APS' attorney, Quick and Decker met in Decker's home on March 19, 2013 and Quick and Decker proposed that Maurice Laufer be appointed limited guardian. (CP 498.) Laufer had

previously assisted Decker with her finances in his professional capacity as an enrolled agent, tested and background checked by the IRS as a tax professional. (*Id.*) The GAL thereafter investigated Laufer's qualifications and fitness to serve as limited guardian. The GAL filed a Supplemental Report on April 19, 2013 recommending that the court appoint Laufer as Limited Guardian to manage Decker's finances and assist her in managing other personal affairs. (CP 497-501.)

On May 7, 2013, with the consent of all parties, an Agreed Order Appointing Limited Guardian of Person and Limited of Estate was formally presented to and entered by Commissioner Dicke ("Agreed Guardianship Order"). (CP 84-96.) A copy is attached as Appendix C.

The Agreed Guardian Order set forth Findings of Fact, including:

**1.4 Alternative Arrangements Made By Alleged Incapacitated Person.** The Alleged Incapacitated Person made some alternative arrangements for assistance, but such arrangements are inadequate in the following respects: Mrs. Decker executed a power of attorney instrument that is not in effect due to questions of Ms. Decker's capacity at the time she executed this document. Ms. Decker does not have current capacity to execute a power of attorney instrument at this time.<sup>6</sup>

**1.5 Capacity.** ...The Alleged Incapacitated Person is capable of managing some personal and/or financial affairs, but is in need of a limited Guardian of the person [and] estate. ... Mrs. Decker is no longer able

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<sup>6</sup> The Agreed Guardianship Order canceled the power of attorney. (CP 91.)

to appropriately manage her finances including the payment of her bills and taxes. She has demonstrated inability to provide for her financial safety. She is at significant risk of financial harm based on her inability to independently manage her financial affairs. ...

(CP 83.) It also set forth Conclusions of Law, including:

**2.1 Incapacitated Person.** KEIKO DECKER is an Incapacitated Person within the meaning of RCW Chapter 11.88 and a Limited Guardian of Person and Limited Guardian of Estate should be appointed.

(CP 88.) Laufer was appointed to serve as Limited Guardian. (CP 92-94.)

Though Laufer is a Limited Guardian, the powers and duties the court granted to him are extensive. (CP 88-91.) They include management of Decker's financial affairs, including contracting on her behalf as appropriate, controlling her assets, and selling assets as necessary. The Guardian is authorized to disable Decker's car if it is determined she is unsafe to drive. If Decker's doctor later determined Decker could not make her own informed consent for medical decisions, the Guardian is also given power to make those decisions. *Id.*

With no further dispute regarding Decker's status as incapacitated, Quick was discharged as her independent counsel. (CP 95.) With respect to payment of his legal fees, the Agreed Guardianship Order provided: "The legal fees of Daniel Quick PLLC should be reserved until the 90 [day] hearing and shall be paid from the Guardianship assets. Daniel Quick PLLC may petition the court for additional fees and costs up until

the 90 day hearing.” (CP 95.)

Laufer completed the requisite guardian training (CP 499, 510), took the Oath of Guardian (CP 509), provided the requisite bond (CP 512-13) and was certified as qualified to serve as Decker’s Guardian (CP 511). On July 30, 2013, the Guardian filed an Interim Report. (CP 97-128.)

The Guardian reported that, based on his review of the records available to him, it appeared that \$110,492.82 in attorney fees had already been paid to Quick.<sup>7</sup> (CP 101, 128.) More specifically, the Guardian identified in Decker’s check register 14 payments to Quick from September 2011 through April 2013. (CP 128.) The Guardian did not have access to Quick’s invoices and, since he was only appointed in May 2013, was not involved when the bulk of the fees were incurred. (CP 102.) As a result, the Guardian did not feel he could opine on the fees at that time.<sup>8</sup> (CP 102.) However, the Guardian stated that “the fees are significant and should be reviewed by the Court.” (CP 102.)

The Guardian’s Interim Report was the first disclosure that Quick had been invoicing and receiving payment from Decker without court

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<sup>7</sup> Quick later verified that the actual amount that Decker paid to Quick was \$118,110. (CP 152. *See also*, 212, 215, 221, 226, 229, 232, 233, 235, 236, 241.)

<sup>8</sup> Quick has never produced invoices that correlate for ten payments totaling \$52,888.81 that Keiko Decker made by June 14, 2012. Instead, Quick provided the court with a 16-page report dated July 29, 2013 with time entries from June 20, 2011 through June 11, 2012, but no invoices for these fees. Quick did provide 14 invoices for time incurred thereafter. (*See* payments identified by Limited Guardian at CP 128 and Quick’s time and invoices records at 194-245.)

supervision. Notably, a year earlier, Quick filed a petition with the court seeking approval of a proposed fee agreement and approval of “all necessary and reasonable time and costs spent on taking this matter to trial.”<sup>9</sup> (CP 428-29.) This petition, filed in August 2011, presented for court review an unsigned fee agreement. (CP 442-43.) Though Quick acknowledged that the court had previously “approved additional time for Daniel Quick to serve as independent counsel and ‘vigorously contest the guardianship hearing’” (CP 429), nowhere in the petition or Quick’s supporting declaration did Quick state the time already spent on the case or an estimate of the time required to prepare and present a defense. (*See* CP 428-31; 446-47.) He certainly gave no indication that defense costs could or would be eleven times greater than the court imposed maximum of 50 hours for compensation of \$12,500 (at \$250 per hour).

In any event, Quick had noted his petition for additional authorization for hearing on August 31, 2011 (CP 427),<sup>10</sup> but the matter (along with another motion by the GAL) was continued for hearing on September 29, 2011 (CP 451-52). On September 29, 2011, Quick

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<sup>9</sup> In the same petition, Quick also requested authorization to associate with litigation attorney Sheila Ridgeway. (CP 428-29, 445.) Quick did not believe that his office, comprised of himself, one associate attorney and one paralegal, was capable of handling the trial without the assistance of another litigation attorney. (CP 430-31, 447.)

<sup>10</sup> It appears that Quick initially attempted to obtain an order consistent with his petition *ex parte*; however the submittal was rejected because Quick’s proposed order was not endorsed by all attorneys appearing in this guardianship action. (CP 448.)



voluntarily deferred consideration of his petition and the court reserved ruling on the presented fee agreement. (CP 453.) Thus, no further authorization for fees was entered. Quick never re-noted his request.

**B. Quick's Petition For Attorneys' Fees.**

Quick filed a petition for approval of his attorney's fees on July 30, 2013. The petition revealed that, unbeknownst to APS, the GAL or the court, Quick presented the unapproved fee agreement to Decker and obtained her signature on October 20, 2011. (CP 158-59.) It also revealed that Quick had already, without court supervision, invoiced and received payments from Decker for fees and costs totaling \$118,110. (CP 152.)

In total, Quick requested a fee of \$135,248, which included \$118,110 previously paid and another \$17,138 that was invoiced but outstanding. (CP 152.) Notably, Quick's fee request included \$13,562 for preparing and presenting his fee request. (*See* CP243-45.) That alone, exceeded the \$12,500 (50 total hours) the court authorized through the July 29, 2011 Agreed Fee Order, which was requested and granted for hours necessary "to prepare for final guardianship hearing/trial and/or to negotiate a lesser restrictive alternative to guardianship." (CP 442.)

The GAL responded to Quick's fee petition through a Supplemental Report. (CP 514-19.) The GAL recommended that the court

deny Quick's fee request based on numerous concerns. (CP 515.) Those concerns included that

- there was substantial duplicative time in which Quick was accompanied by a paralegal or associate;
- there were substantial payments to a contract attorney (in excess of \$7,000)<sup>11</sup> without invoices, detail or approval;
- there was substantial time charged for work on revision motions that were not properly confirmed for hearing and thus never considered by the court;
- there was substantial time (in excess of 60 hours) incurred solely for preparation of the fee petition;<sup>12</sup> and
- Quick did not present invoices that matched the multiple payments made by Decker.

(CP 516-19.)

The GAL's most prominently stated concern, however, was that the fees incurred (\$135,248 -- \$118,110 already paid by Decker) grossly exceeded the \$12,500 collectively authorized by the court through the Initial Fee Order and the Agreed Fee Order and were incurred without prior court approval. The GAL explained:

My review of the pleadings filed with the court in this matter revealed two orders relating to the representation of Ms. Decker by Daniel Quick. The first order, drafted by me as GAL and presented by the

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<sup>11</sup> Quick's invoices reveal that he charged and received payment from Decker a total of \$8,600 for contract attorney fees paid to Thiel Keaton. (CP 212, 214, 226.)

<sup>12</sup> Quick's invoices reveal that \$13,562 (52.26 hours) was charged to Decker to prepare and present the fee petition to the Commissioner. (CP 243-45.)

AG's office, was entered on June 22, 2011; this order appointed Mr. Quick as counsel and gave him 10 hours of authority at the rate of \$250/hr to represent Ms. Decker. *Exhibit A*. The second order was entered by agreement on July 29, 2011 and gave Mr. Quick an additional 40 hours of authority at the rate of \$250/hr. *Exhibit B*. Both orders include language that mandates prior court approval before exceeding the authority granted.

My review of the pleadings in this matter did not reveal any declarations regarding fees for representation of Ms. Decker (prior to the one filed July 30, 2013), or any requests for, or orders authorizing, payment of fees for the representation of Ms. Decker.

The Declaration of Daniel Quick filed July 30, 2013 addresses the issue of fees and includes, as an exhibit, the fee statement for his representation of Ms. Decker. He does not address the limits of authority or lack of prior authorization for additional authority. Likewise, there is no explanation why payments were made, and received, without court approval.

(CP 515.) The GAL concluded:

My role as GAL in this matter was to look out for Ms. Decker's best interest. It was clear to me that she did not understand the guardianship process and could not process much of my explanations. I thought it was in her best interests to have counsel appointed and Mr. Quick agreed that he was qualified and willing to act in that capacity. He worked diligently to promote Ms. Decker's stated preferences, but failed to follow court orders which mandate that he get prior approval of the court for additional authority (hours) to represent her. My understanding of RCW 11.88 is that it is meant to preserve the AIP's rights as well as protect the AIP's assets. By disregarding the court order of July 29, 2011 [Agreed Fee] Order, which he drafted, Mr. Quick took oversight of Ms. Decker's assets out of the hands

of the court. He also began billing her for his services, and accepting payments, without leave of the court which also seriously undermines the protections of RCW 11.88. Had the proper procedures been followed throughout this case: fees would not be at issues to the degree they are; Mr. Quick would not have to spend 60+ hours to try and get his fees approved; and the court would have had the opportunity to monitor the time and fees in advance. (Emphasis added.)

(CP 518-519.)

Commissioner Dicke, the same Commissioner that heard both motions to dismiss and entered the Agreed Guardianship Order heard Quick's petition for fee approval. (CP 399.) The Commissioner shared the same concerns expressed by the GAL and admonished Quick:

Regardless of the contract, you still are under a court order to do only a certain amount of work without further court authority. So you kind of took your own risk in that regard, because the court is always mindful of maintaining a substantial amount, try to limit litigation costs and keep as much money available for the alleged incapacitated person.

And that's why we put limits, because we want to have some oversight.

(CP 350-351.) (The transcript of proceeding is attached as Appendix D.)

In light of the prior court orders (CP 32-33, 422-23), the Commissioner could have limited Quick's fee to \$12,500. She did not. Instead the Commissioner considered the petition and the record to determine a just and reasonable fee. The appropriate hourly rate was previously set by the court at \$250 when Quick was appointed (CP 32-33;

*see also* CP 422-23), so the Commissioner was not required to determine a reasonable rate on Quick's petition. The question was the time spent and the total fee. Commissioner Dicke held that Quick's fees were excessive:

\$100,000 plus is not reasonable in this kind of matter. No matter how hard or difficult Ms. Decker is, no matter how much of a defense she wants, you still have to be mindful of, you know, what kind of context this is. So, you know, I don't know what to say. You're authorized from (inaudible) calculation is like \$12,500 is what the court okayed.

Now, I think that given the difficulty and the fact that ultimately some additional funds over and above what was initially authorized makes sense, but nowhere near the 110 that you've already, I guess, received.

I have to agree, it is somewhat unusual in the context of someone that's being brought before the court for concerns about exploitation to be receiving funds without the court's blessing.

\* \* \*

Well, my inclination is, you know, and this even compared to other cases that I have is a pretty generous ruling, . . . but given the difficulty, I'd be inclined to order \$30,000.

(CP 367-68.) The court further ordered that payments made to Quick in excess of the court-approved fee must be reimbursed to Decker. (CP 331.)

Quick moved to revise Commissioner Dicke's order (CP 334-37), but the motion was denied by Judge Jack Nevin (CP 381-82.) Quick appealed. (CP 383-91.) Following an Interim Report by the Guardian which informed the court of Quick's appeal (CP 397-98), the court ordered the Guardian to defend the appeal (CP 416-17.)

## IV. ARGUMENT

### A. Standard of Review

The court's legal authority to review and reduce the fees Quick charged to and collected from Decker presents a question of law which is reviewed de novo. *In re Guardianship of Matthews, supra*, 156 Wn. App. at 201. The Commissioner's determination of a just and reasonable fee is reviewable for abuse of discretion. A court abuses its discretion "when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons." *In re Guardianship of Lamb, supra*, 173 Wn.2d at 189. "A decision is based on untenable grounds or made for untenable reasons if it rests on facts unsupported by the record or was reached by applying the wrong legal standard." *Id.*

### B. The Court Has Authority To Review And Reduce Quick's Fees.

#### 1. *Beecher* does not apply to this matter in which Keiko Decker is adjudicated to be incapacitated.

Quick relies upon *Beecher, supra*, to argue that no court has authority to review the fees incurred defending Decker in the guardianship proceeding. Division I's decision in *Beecher* does not apply to this case.<sup>13</sup>

Significantly, in *Beecher* and unlike here, there was never an

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<sup>13</sup> The Guardian agrees and joins with the Department's argument that *Beecher* was wrongly decided and is not binding on this Court. (See Department's Brief at pp. 16-22.)

adjudication of incapacity. 130 Wn. App. at 68. Beecher's attorney, Watson Blair, had previously represented Beecher on other matters over the prior two years and was selected by Beecher to defend her in the guardianship proceeding initiated by her stepson. *Id.* Beecher's contract with Blair was separately reviewed and approved by Beecher's independent attorneys-in-fact (Peter and Evelyn Kirton) and the contract affirmatively stated:

You have told me that you desire to resist and to defend against a guardianship aggressively and "at all costs." I will keep you abreast of the costs and will advise you of your options from time to time. The costs of an adversarial proceeding can be extremely high. We strongly recommend that you review and reconsider the strategy with some regularity and with an eye on the projected costs.

*Id.* at 69. While Blair was appointed by the court as required by RCW 11.88.045(2), *id.* at 69, n. 1, it appears the order did not require prior court approval of fees.

After several motions were presented to the court commissioner, the commissioner ordered all parties to present their fees for review and approval. Neither Beecher nor his attorneys-in-fact disputed the fees. *Id.* at 69. The commissioner held that Blair's fees were subject to review under RCW 11.88.045 and, further, determined that the fees were unreasonable and inappropriate. *Id.* at 69-70. Ultimately, following an agreement of the

parties, the petition was dismissed without an adjudication of incapacity and without appointment of a guardian. *Id.* at 70. The court entered judgment in favor of Blair in the amount \$33,292.44, plus interest, since, unlike here, Blair did not collect payment without court review. *Id.*

Blair appealed. He argued that “the trial court did not have authority to review his fees because Beecher had a valid durable power of attorney in place, she and her attorneys-in-fact approved Blair’s fees and, most importantly, she was never adjudicated incapacitated.” *Id.* at 70.

Under the circumstances presented in that case, the *Beecher* court held:

Since RCW 11.88.045 incorporates the guardian fee review provisions, a court’s statutory review of an AIP’s attorney’s fees must also be limited to situations where there has been a determination that the AIP is in fact incapacitated. Until that time, she has the same autonomy and rights as any other person. As Beecher was never adjudicated to be an incapacitated person, the guardianship statute did not provide a basis on which the trial court could review Blair’s fees. (Emphasis added.)

*Id.* at 72. The court further noted that Beecher was adequately protected:

She chose Blair, an attorney with whom she was familiar from his previous work on her behalf. He provided a detailed contract stating his hourly rate and warning of the potential for high costs inherent in Beecher’s litigious approach to defending her autonomy. Beecher and her attorneys-in-fact approved. Since Beecher never lost her capacity to contract, there was no basis on which to invalidate her contract with Blair.

*Id.* at 73.



The situation presented here is vastly different. Unlike in *Beecher*, (1) there was no oversight by an independent attorney-in-fact; (2) the power of attorney Decker granted Quick in December 2011 was voided due to questions of her capacity at the time she signed; (3) approval of Quick's fee agreement was reserved but never granted; (4) Quick did not disclose to the court or the GAL that he later obtained, on October 20, 2011, Decker's signature on the fee agreement; (5) Quick obtained payments from Decker's estate without notice and without court oversight; and, most importantly, (6) Decker was adjudicated to be incapacitated. The trial court retained jurisdiction under RCW 11.88.045 to review the fees charged to Decker and properly exercised its authority when it reduced Quick's fees.

**2. Even if *Beecher* applied, it does not bar court review of Quick's fee because he consented to a court order authorizing review.**

Even if *Beecher* could be construed to generally apply to proceedings ending in adjudication of incapacity, it still has no application here since Quick voluntarily submitted to binding court review of his fees.

From the time Quick was appointed, the terms of his representation, including the terms for compensation, were established by court order. The June 22, 2011 Initial Fee Order provided:

[I]ndependent legal counsel shall be paid at private

expense, with fees for representation subject to approval pursuant to RCW 11.92.180 and SPR 98.12. Legal counsel for Keiko Decker shall bill at a rate of \$250 per hour, and shall have 10 hours of authority to represent Ms. Decker. Independent counsel shall not spend more than 10 hours representing Ms. Decker without prior court approval. (Emphasis added.)

(Appendix A - CP 32-33.)

With regard to this Initial Fee Order, Quick now states:

The order provided Mr. Quick was given “10 hours of authority to represent Mrs. Decker” and that “Independent counsel shall not spend more than 10 hours representing Ms. Decker without prior approval,” CP 32. These limitations were at odds with the express duty under the statute for independent counsel to follow the client’s, not the GAL’s or the Court’s, directions; were at odds with the fact that Mrs. Decker had not been declared incompetent to manage her affairs; and at odds with her determination and right to fight the guardianship.

(Quick Brief at p. 8.) However, Quick, who holds himself out as experienced in guardianship law, did not object to (or even express concern regarding) the limitation on hours and requirement for advance court approval when the Initial Fee Order was entered. To the contrary, only one month later, Quick himself prepared the Agreed Fee Order which confirmed the requirement for prior court approval of hours and fees.

Quick presented the Agreed Fee Order on July 29, 2011.<sup>14</sup> By this

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<sup>14</sup> That Quick prepared the Agreed Fee Order is further verified by Quick’s time records. Those records reveal that Quick and his paralegal collectively spent 5.6 hours preparing

time, Quick had met with Decker and assessed the requirements for her defense.<sup>15</sup> The Agreed Fee Order included the following Stipulation signed by Quick, counsel for APS and the GAL:

1. The alleged incapacitated person wishes to vigorously contest the guardianship hearing and needs counsel to prepare that defense;
2. By Court Order dated June 22, 2011, Daniel F. Quick was appointed independent legal counsel for the AIP, Keiko Decker and
3. Under the Court Order dated June 22, 2011, Daniel F. Quick needs further authority from the Court for an additional 40 hours to prepare for the final guardianship hearing/trial and/or to negotiate a lesser restrictive alternative to the guardianship. (Emphasis added.)

(CP 422.) Based on the Stipulation, the Court accepted and entered the Agreed Fee Order providing:

1. Daniel F. Quick ... is appointed to continue as independent legal counsel for Keiko Decker under the Court Order June 22, 2011, and shall be authorized to spend an additional forty (40) hours for work on this matter on behalf of the AIP, Keiko Decker;
2. Independent legal counsel shall be paid at private expense, with fees for representation subject to the

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the Agreed Fee Order and traveling to Pierce County to have the Agreed Fee Order entered ex parte. (CP 195.)

<sup>15</sup> Quick's time records reveal that prior to preparing the Agreed Fee Order, he talked to Decker on the phone on June 27, 2011 and that he and his paralegal both spent 4 hours meeting with Decker on June 29, 2011. (CP 194.) Quick had also had the opportunity to discuss with counsel for APS the "case, procedural hearing and lesser restrictive alternatives." (CP 195.)

**Court's approval pursuant to RCW 11.92.180 and SPR 98.12.** Legal counsel for Keiko Decker shall bill at the rate of \$250 per hour, and shall have further forty (40) hours of authority to represent Ms. Decker;

3. **Independent legal counsel shall not spend more than forty (40) hours representing Ms. Decker without prior court approval.** (Emphasis added.)

(CP 423-24.) The Initial Fee Order and the Agreed Fee Order set the terms for Quick's representation.

Though Quick now criticizes the Initial Fee Order (he completely omits the Agreed Fee Order), he did not argue to the Commissioner or to the Judge on revision that the order illegally constrained his representation. Indeed, Quick would not have submitted his fee petition if he believed court approval was not required. Notably Quick did not include the Initial Fee Order in his Notice of Appeal (CP 383-91) or challenge it in his Assignments of Error. Quick's attempt to now unilaterally change the terms of his representation through this belated challenge to court review is not well taken.

Quick voluntarily submitted to, and through the Agreed Fee Order even invoked the court's jurisdiction and authority over his fees.<sup>16</sup> Quick

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<sup>16</sup>As noted earlier, Quick also petitioned the court in August 2011 for approval of a proposed fee agreement between himself and Decker, which at that time was unsigned. (CP 428-445.) Quick noted his petition for hearing (CP 427), voluntarily deferred consideration of his petition and the court expressly reserved ruling on the presented fee agreement. (CP 453; *see also* 451-52.) No further authorization for fees was entered.

did not argue to the trial court that the court was without authority to review his fees. Certainly *Beecher* was not cited to either Commissioner Dicke or Judge Nevin. The argument is raised for the first time on appeal.

An appellate court “may refuse to review any claim of error which was not raised in the trial court.” *Grange Ins. Ass’n v. Roberts*, \_\_ Wn. App. \_\_, 320 P.3d 77, 95 (2013), *quoting* RAP 2.5(a); *Roberson v. Perez*, 156 Wn.2d 33, 39, 123 P.3d 844 (2005). In this case, consideration of Quick’s newly raised objection to court review is particularly inappropriate, since Quick invited binding court review when he prepared and presented the Agreed Fee Order. A party may not set up an alleged error and then complain of it on appeal. *In re Marriage of Morris*, 176 Wn. App. 893, 900, 309 P.3d 767 (2013).

Quick voluntarily submitted to binding court review of his fees and removed from this case any potential application of *Beecher*.

**C. The Commissioner Properly Exercised Its Discretion When It Reduced Quick’s Fee and Provided An Adequate Record For Appellate Review And Affirmation Of The Fee Determination.**

In any civil litigation in which the court reviews a potential attorney fees award to a prevailing party, the court reviews the fees to

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Notably, in subsequent pleadings, Quick consistently referred to the Initial Fee Order as his authority to act as independent counsel for Decker. Quick never referred to any contractual relationship or contractual authority to act. (*See* CP 70, 76, 475.) In any event, Quick’s petition further evidences that Quick voluntarily and knowingly invited court review of his hours and fees and he knew prior court approval was required.

determine, in its discretion, a reasonable fee. Here, the fee is requested in the context of a guardianship, which proceedings are unique because the court bears the responsibility of protecting the person and the estate of an incapacitated person. *In re Guardianship of Hallauer, supra*, 44 Wn. App. at 797. Regarding independent counsel, RCW 11.88.045(2) provides:

During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated shall petition to be appointed to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180. (Emphasis added.)

RCW 11.92.180 allows compensation for services “as the court shall deem just and reasonable.” (Emphasis added.)

Quick argues that, under *Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d 632 (1998), the Commissioner was required to base the fee determination on a lodestar analysis. *Mahler* does not, however, impose such a requirement, but encourages courts to be guided by the lodestar analysis. *Id.* at 433. *See also, Highland School District No. 203 v. Racy*, 149 Wn. App. 307, 202 P.3d 1024 (2009) (holding that “in the absence of mandatory authority requiring application of the lodestar methodology, we do not believe the trial court abused its discretion by not following the formula.”) Moreover, close review of the court’s ruling reveals that the

Commissioner was, in fact, guided by lodestar principles, as well as its statutory duties under RCW 1.88, when it determined a just and reasonable fee for Quick's services under the circumstance of this guardianship proceeding.

"The essence of the lodestar methodology is the initial formula: a reasonable hourly rate for a reasonable number of hours." *Highland School Dist. No. 203*, 149 Wn. App. at 316-17. Here, the reasonable hourly rate of \$250 was previously set by the court when Quick was appointed and then confirmed in the Agreed Fee Order. (CP 32-33, 422-26.) Thus, the rate was not at issue when Quick presented his fee petition.

Regarding assessment of reasonable hours, Quick notably did not present a lodestar analysis in his fee petition (or on his revision motion). (See CP145-53.) In fact, the trial court could not determine the number of hours accumulated without undertaking the tedious and time-consuming task of manually adding the hours detail presented on multiple pages.<sup>17</sup> (See CP 516; CP 194-245.) Under the methodology, the party seeking fees bears the burden of proving reasonableness. *Mahler*, 134 Wn.2d at 433-34.

In any event, the purpose of the lodestar methodology is to cause

---

<sup>17</sup> For hours incurred from June 20, 2011 through June 11, 2012, no totals are provided to the trial court; just a 16-page report with a year's worth of time entries. (CP 194-209.) Thereafter, 14 separate invoices are provided. While each invoice has a separate subtotal for hours invoiced (CP 210-45), Quick never provides a calculation of the total number of hours billed to Decker in either his declaration or his petition (see CP 145-53, 188-92).

the court to take “an active role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel.” *Mahler*, 135 Wn.2d at 434-35 (emphasis added), *citing Nordstom, Inc. v. Tampoulos*, 107 Wn.2d 735, 744, 733 P.2d 208 (1987)(“a determination of what constitutes reasonable attorney fees should not be accomplished solely by referencing the number of hours a law firm representing a successful plaintiff can bill”). Though she did not call it a lodestar analysis, the transcript of Commissioner Dicke’s oral ruling reveals that she did essentially engage in the analysis and evaluated the hours expended. She did so in the context of the statutory requirement that the fee not only be reasonable, but also just under the circumstances.

RCW 11.92.180. The Commissioner explained the fee determination:

\$100,000 plus is not reasonable in this kind of matter. No matter how hard or difficult Ms. Decker is, no matter how much of a defense she wants, you still have to be mindful of, you know, what kind of context this is. So, you know, I don’t know what to say. You’re authorized from (inaudible) calculation is like \$12,500 is what the court okayed.

Now, I think that given the difficulty and the fact that ultimately some additional funds over and above what was initially authorized makes sense, but nowhere near the 110 that you’ve already, I guess, received.

I have to agree, it is somewhat unusual in the context of someone that’s being brought before the court for concerns about exploitation to be receiving funds



without the court's blessing.

\* \* \*

Well, my inclination is, you know, and this even compared to other cases that I have is a pretty generous ruling, . . . but given the difficulty, I'd be inclined to order \$30,000.

(CP 367-68.)

Quick defends the excessive hours arguing, essentially, that he had no choice but to bill sizable hours because Decker demanded a vigorous defense. But, an attorney is required to exercise "billing judgment" both in billing his client and in submitting a fee request to the court. *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 156, 859 P.2d 1210 (1993)(reducing a fee based on 481 to 70 hours); *see also* RPC 1.5 (at CP 325) instructing that a lawyer shall not charge or collect an unreasonable fee.<sup>18</sup>

The Commissioner considered the circumstances of Quick's representation: The court considered that Quick represented a person vulnerable to financial exploitation; the substance of the litigation; that Quick, contrary to court orders, chose to invoice and collect from Decker without court oversight; and that Decker was deemed incapacitated.

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<sup>18</sup> To further justify the excessive hours accumulated, Quick relies on the length of the proceeding and general descriptions laden with hyperbole. Quick argued to the Commissioner: "It was big, ugly, messy litigation that included several dispositive motions on both sides, including taking certain items upon [sic] revision. And so this is a complicated case and it went on for 26 months." (CP 349.) In reality, there were two motions to dismiss with limited briefing, and Quick's revision motions were never considered since he failed to confirm the hearing. (CP 44-59, 75-81, 275-76, 322, 517.)

Ultimately, the court concluded that the fees Quick charged were excessive. Consistent with the standard set forth in RCW 11.92.180, and well within its discretion, the Commissioner determined that a \$30,000 fee was “just and reasonable” under the circumstances.

Quick next argues that the Commissioner’s fee determination must be reversed and remanded because the Commissioner did not enter findings of fact and conclusions of law. However, the purpose of findings is to provide the appellate court with an adequate record to review the fee determination. To be sufficient for review, the record must show a tenable basis for the award. *Leoffelholz v. Citizens for Leaders with Ethics and Accountability Now*, 119 Wn. App. 665, 690, 82 P.3d 1199 (2004). Entry of formal findings and conclusions has not been required when the court has otherwise adequately articulated the basis of its determination. *See Banuelos v. TSA Washington, Inc.*, 134 Wn. App. 607, 626, 141 P.3d 652 (2006); *Johnson v. Jones*, 91 Wn. App. 127, 135, 955 P.2d 826 (1998). Indeed, it would be an unnecessary and inefficient step to remand to the trial court to enter formal findings to provide analysis that is already clear from the record through the Commissioner’s oral ruling.

In this case, Quick violated a court order by failing to obtain prior court approval before incurring and collecting fees in excess of the 50 hours authorized. The Commissioner could have limited Quick to the

\$12,500 authorized by the combined Initial Fee Order and Agreed Fee Order. It did not. Instead, the Commissioner more than doubled the prior authority and approved (and explained) a fee that was “just and reasonable” under the circumstances of this guardianship proceeding.

The Commissioner’s decision was well-reasoned, well-explained and easily within the Commissioner’s discretion.

**D. Quick’s Request To Assess Fees Against The Guardian As A Penalty For Defending Quick’s Appeal Is Inappropriate And Without Legal Support.**

Despite that Quick failed to persuade both Commissioner Dicke and Judge Nevin of his position, Quick asserts that the issues presented on this appeal are so well-settled by controlling law that the Guardian’s defense of the appeal – which puts more than \$105,000 of Decker’s assets at risk – is somehow inappropriate. Quick argues that any party who dares to defend the appeal should be responsible for Quick’s attorney fees and, further, should be denied compensation from Decker’s estate. Quick’s argument (and request) further demonstrates his insensitivity to the need to protect Decker from exploitation and the Guardian’s duties in that regard.

First and foremost, the Guardian has a duty to safeguard and preserve Decker’s assets. RCW 11.88.040(4). Moreover, before defending this appeal, the Guardian informed the court of the appeal and requested instruction from the court. On January 14, 2014 the Guardian reported:

The Commissioner's ruling on attorney fees for Daniel Quick, attorney for Keiko Decker during the petitioning process, was reviewed by Judge Nevin who denied the motion to revise. That matter was appealed to the Court of Appeals by Mr. Quick. The Guardian has suggested a compromise might be appropriate (and of course reviewed by the Court). There has been no response. Mr. Quick was paid \$118,110 without a Court order. It appears that he claims \$130,000 in fees. The Court awarded him \$30,000. A Guardian ad Litem continues to be involved, but indicates he does not expect to be actively involved. Further, the Attorney General's office does not anticipate active involvement either. Of course, the Petitioner and the Guardian ad Litem were most aware of the issues involved with the Petition for Guardian. The Guardian was asked to be involved at Ms. Decker's request just prior to appointment. Unless the Court instructs otherwise, the Guardian will defend the appeal, although the Guardian does not believe that is completely appropriate for the situation.

(CP 397-98.) The court issued an order on the Interim Report on January 24, 2014, and instructed the Guardian to defend the appeal. (CP 416-17.) The Guardian's actions here are consistent with his statutory duties and the court's order that the Guardian is duty bound to follow.

Quick asserts that the court was uninformed of the basis of his appeal when it issued the instruction.<sup>19</sup> But the trial court has knowledge of all briefing and argument presented to the trial court. If Quick properly

---

<sup>19</sup> Quick also complains he did not get notice of the Interim Report and its presentation. Quick was discharged (CP 95) and is not a party in interest in the guardianship. Quick's counsel did put in a limited notice of appearance to receive pleadings related to the appeal and has received the Guardian's filings in that regard, including his supplemental designation of clerk's papers. In any event, nothing has stopped Quick from submitting his own filings to the court to educate the trial court on matters he deems relevant.

raised and preserved the issues now presented, he cannot argue that the trial court is not adequately informed. His argument only highlights that the challenges on appeal are newly asserted and not properly preserved.

Quick asserts that he provided the Guardian with “notice” of his newly asserted indefensible arguments and that the Guardian failed to heed and advise the trial court of that notice. It is this so-called “notice” and alleged failure to heed, and authority construing Civil Rule 11,<sup>20</sup> that is the basis of Quick’s request for the court to assess all attorneys’ fees incurred against any party who defends the appeal. Quick gives no citation to the record, because his “notice” is not in the record. Moreover, Quick unsubstantiated description is incomplete. He omits relevant correspondence from the Guardian that completes the parties’ dialogue.

In a separate pleading, the Guardian has moved to strike Section IV.D of Quick’s brief and the included request that is based solely on his incomplete description of evidence not in the record. In the alternative, if the Court is inclined to consider the argument, the Guardian requests the Court to supplement the record with the February 7, 2014 letter that Quick holds out as “notice,” as well as the Guardian’s related December 12, 2013 and February 20, 2014 letters attached to the Guardian’s motion.

Quick’s “notice” came via a February 7, 2014 letter, five months

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<sup>20</sup> Quick cites *McDonald v. Korum Ford*, 80 Wn. App. 877, 912 P.2d 1052 (1996).

after Judge Nevin denied revision, four months after the Notice of Appeal and two months after the Guardian, through a December 12, 2013 letter, presented a compromise proposal (that, if accepted, would have avoided further litigation costs). The February 2014 “notice” rejecting the compromise was the first time Quick pointed to *Beecher* and *Mahler* to support his appeal. Notably, though Quick presented his new arguments, he did not advise the Guardian that he intended to request the court to assess fees against the Guardian if he dared to disagree and defend. In any event, the Guardian, through his attorney, evaluated the new arguments and responded by letter with his analysis in disagreement on February 20, 2012. Though Quick alleges the trial court is not adequately informed, he has done nothing to inform the court of his position.

The Guardian has a duty to preserve Decker’s assets. This appeal puts at risk \$105,000 of Decker’s funds. The Guardian disagrees with Quick’s analysis of the issues and believes that defense is not only appropriate but necessary to fulfill his duties. Neither the Guardian nor his attorney have received compensation without first submitting complete detail of their work and obtaining court approval. Upon submission of a request, the trial court will determine the just and reasonable fee that may be paid from Decker’s estate to the Guardian and his attorney. Quick’s request to this Court is without legal or factual support.

## V. RAP 18.1 REQUEST FOR ATTORNEY'S FEES

Pursuant to RAP 18.1 and RCW 11.96A.150, the Guardian requests that the Decker estate be awarded attorneys' fees against Quick for the fees the Guardian incurred defending this appeal. RCW 11.96A.150 authorizes the court in a guardianship proceeding to award, in its discretion, reasonable fees to and against any party "in a manner as the court determines to be equitable." Here the Court is presented with a party that sought and received compensation from a person vulnerable to financial exploitation in violation of court orders. The appeal is not well-founded in fact or law and, because it placed \$105,000 of estate assets at risk, required the Guardian to incur costs to defend. An award of fees against Quick and in favor of the Decker estate is appropriate.

## VI. CONCLUSION


This court should affirm the trial court's order limiting Quick's compensation to \$30,000 and requiring reimbursement to Decker's estate for payments in excess of the approved fee.

Dated this 25<sup>th</sup> day of June, 2014.

Respectfully submitted,

GORDON THOMAS HONEYWELL LLP

By

  
Margaret Y. Archer, WSBA No. 21224  
Eileen S. Peterson, WSBA No. 17405  
Attorneys for Maurice Laufer, Guardian

STATE OF WASHINGTON  
JUN 25 2014

2014 JUN 25 PM 3:33

COURT OF APPEALS, DIVISION II

No. 45465-3

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

CLERK

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IN RE THE GUARDIANSHIP OF:

KEIKO DECKER,

An Incapacitated Person.

---

CERTIFICATE OF SERVICE

---

GORDON THOMAS HONEYWELL LLP  
Margaret Y. Archer, WSBA No. 21224  
Eileen S. Peterson, WSBA No. 17405  
Attorneys for Maurice Laufer, Guardian

Suite 2100  
1201 Pacific Avenue  
P.O. Box 1157  
Tacoma, WA 98401-1157  
(253) 620-6500

ORIGINAL



THIS IS TO CERTIFY that on this 25<sup>th</sup> day of June, 2014,  
I did serve via email and U.S. Postal Service, true and correct  
copies of Guardian Maurice Laufer's Response Brief and Guardian  
Maurice Laufer's Motion to Strike Portion of Appellant's Brief or,  
Alternatively, to Supplement Record by addressing and directing  
for delivery to the following:

Gregory Mann Miller  
Carney Badley Spellman PS  
701 5th Ave Ste 3600  
Seattle, WA 98104-7070  
[miller@carneylaw.com](mailto:miller@carneylaw.com)

Natalie K. A. Cooper  
Office of the Attorney General  
PO Box 40124  
Olympia, WA 98504-0124  
[nataliec@atg.wa.gov](mailto:nataliec@atg.wa.gov)

Stephen J. DeVoght  
DeVoght Law, PLLC  
PO Box 2537  
Vashon Island, WA 98070-2537  
[steve@devoghtlaw.com](mailto:steve@devoghtlaw.com)

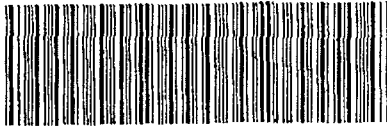
  
\_\_\_\_\_  
Frances Ostruske

# **APPENDIX A**

## **ORDER APPOINTING INDEPENDENT LEGAL COUNSEL FOR ALLEGED INCAPACITATED PERSON**

**Entered June 22, 2011  
("Initial Fee Order")**

**CP 32-33**



11-4-00294-5 36852273 ORAP 06-23-11

FILED  
IN COUNTY CLERK'S OFFICE

A.M. JUN 22 2011 P.M.  
PIERCE COUNTY WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

In the Guardianship of: ) Case No.: 11-4-00294-5  
)  
) ORDER APPOINTING  
KEIKO DECKER, ) INDEPENDENT LEGAL COUNSEL  
) FOR ALLEGED INCAPACITATED  
An Alleged Incapacitated Person. ) PERSON

**ORDER**

**This matter**, having come on regularly for hearing upon the Verified Petition of Stephen J. DeVoght, the court appointed Guardian ad Litem for KEIKO DECKER; and the Court having reviewed the pleadings before it. It is hereby,

**Ordered** that Daniel F. Quick, telephone number (206) 787-1417, be and he is hereby appointed independent legal counsel for Keiko Decker; and it is further

**Ordered** that independent legal counsel shall be paid at private expense, with fees for representation subject to the Court's approval pursuant to RCW 11.92.180 and SPR 98.12. Legal counsel for Keiko Decker shall bill at the rate of \$250 per hour, and shall have 10 hours of authority to represent Ms. Decker. Independent counsel shall not spend more than 10 hours representing Ms. Decker without prior court approval.

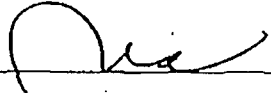
In the event that payment from public funds are sought for services herein, the attorney, by accepting this appointment, agrees to be bound by all rules and procedures of

ORDERTO APPOINT INDEPENDENT LEGAL  
COUNSEL FOR AIP- 1

STEPHEN J. DEVOGHT, GAL  
P.O. Box 2537  
VASHON, WASHINGTON 98070  
206-819-2944

1 this court regarding limits for payment at public expense. Fees for time are limited to  
 2 10(TEN) hours at the rate of \$250.00 per hour without further court order entered before  
 3 incurring the additional time. Such court order will be with notice to all parties and the  
 4 GAL. If the AIP later is discovered to have assets exceeding \$3,000.00, the attorney for the  
 5 AIP may petition to have his/her fees paid at private expense and shall reimburse the county  
 6 for any fees received.

7  
 8 **Dated and signed in open court this 22 day of June, 2011**

9  
 10   
 11 Judge Court Commissioner

12 PRESENTED BY:

13 *Email authorization*  
 14 Stephen J DeVoght, WSBA #36133  
 15 Guardian ad Litem

FILED  
 IN COUNTY CLERK'S OFFICE

A.M. JUN 22 2011 P.M.  
 PIERCE COUNTY WASHINGTON  
 KEVIN STOCK, County Clerk  
 BY \_\_\_\_\_ DEPUTY

16 NOTICE OF PRESENTATION:

17 *Margaret M Kennedy*  
 18 *Asst Attorney General, WSBA # 27558*  
 19 Attorneys for Petitioner

20  
 21  
 22  
 23  
 24  
 25  
 26  
 ORDER TO APPOINT INDEPENDENT LEGAL  
 COUNSEL FOR AIP-2

STEPHEN J. DEVOGHT, GAL  
 P.O. Box 2537  
 VASHON, WASHINGTON 98070  
 206-819-2944

# **APPENDIX B**

## **AGREED ORDER AUTHORIZING ADDITIONAL HOURS FOR LEGAL COUNSEL OF ALLEGED INCAPACITATED PERSON**

**Entered July 29, 2011  
("Agreed Fee Order")**

**CP 422-426**

# **APPENDIX B**

## **AGREED ORDER AUTHORIZING ADDITIONAL HOURS FOR LEGAL COUNSEL OF ALLEGED INCAPACITATED PERSON**

**Entered July 29, 2011  
("Agreed Fee Order")**

**CP 422-426**



11-4-00294-5 36869398 AGOR 08-02-11

FILED  
IN COUNTY CLERK'S OFFICE

A.M. JUL 29 2011 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY                      DEPUTYIN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

In the Guardianship of:

No. 11-4-00294-5

KEIKO DECKER,

AGREED ORDER  
AUTHORIZING ADDITIONAL  
HOURS FOR LEGAL COUNSEL  
OF ALLEGED INCAPACITATED  
PERSON

An Alleged Incapacitated Person.

STIPULATION

The undersigned hereby stipulate to entry of the following order on behalf of the parties due to the following reasons:

1. The alleged incapacitated person wishes to vigorously contest the guardianship hearing and needs counsel to prepare that defense;
2. By Court Order dated June 22, 2011, Daniel F. Quick was appointed independent legal counsel for the AIP, Keiko Decker; and
3. Under the Court Order dated June 22, 2011, Daniel F. Quick needs further authority from the Court for an additional 40 hours to prepare for the final guardianship hearing/trial and/or to negotiate a lesser restrictive alternative to the guardianship.

AGREED ORDER AUTHORIZING  
ADDITIONAL HOURS FOR LEGAL  
COUNSEL - 1

DANIEL QUICK, PLLC  
The Columbia Center  
701 5th Avenue #4720  
Seattle, Washington 98104  
(206) 787-1417

ORIGINAL

1  
2 DATED this 27<sup>th</sup> day of July, 2011.

3  
4  
5 

6 Daniel Quick, WSBA #26064  
7 Attorney for Keiko Decker

8 See Attached

9 Stephen De Voght, WSBA # 36133  
10 Guardian ad Litem

11 See Attached

12 Margaret Kennedy WSBA # 27558  
13 Assistant Attorney General  
14 Attorney for Petitioner

15 **ORDER**

16 Based on the foregoing Stipulation, it is ORDERED that

- 17 1. Daniel F. Quick, telephone number (206) 787-1417, is appointed to continue  
18 as independent legal counsel for Keiko Decker under the Court Order June  
19 22, 2011, and shall be authorized to spend an additional forty (40) hours for  
20 work on this matter on behalf of the AIP, Keiko Decker;
- 21 2. Independent legal counsel shall be paid at private expense, with fees for  
22 representation subject to the Court's approval pursuant to RCW 11.92.180  
23 and SPR 98.12. Legal counsel for Keiko Decker shall bill at the rate of \$250  
24 per hour, and shall have further forty (40) hours of authority to represent Ms.  
25 Decker.

26 AGREED ORDER AUTHORIZING  
27 ADDITIONAL HOURS FOR LEGAL  
28 COUNSEL - 2

DANIEL QUICK, PLLC  
The Columbia Center  
701 5th Avenue #4720  
Seattle, Washington 98104  
(206) 787-1417




3. Independent legal counsel shall not spend more than forty (40) hours representing Ms. Decker without prior court approval.

DATED this 29th day of July, 2011.

  
Honorable Judge/Court Commissioner

Presented By:

Approved as to Form,  
Notice of Presentation Waived

  
Daniel Quick, WSBA #26064  
Attorney for Keiko Decker

See Attached  
Stephen De Voght, WSBA # 36133  
Guardian ad Litem

FILED  
IN COUNTY CLERK'S OFFICE

A.M. JUL 29 2011 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

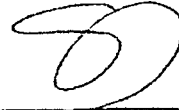
See Attached  
Margaret Kennedy, WSBA # 27558  
Assistant Attorney General  
Attorney for Petitioner

AGREED ORDER AUTHORIZING  
ADDITIONAL HOURS FOR LEGAL  
COUNSEL - 3

DANIEL QUICK, PLLC  
The Columbia Center  
701 5th Avenue #4720  
Seattle, Washington 98104  
(206) 787-1417

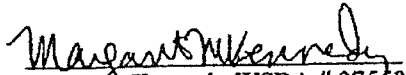
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DATED this \_\_\_\_ day of July, 2011.



Daniel Quick, WSBA #26064  
Attorney for Keiko Decker

Stephen De Voght, WSBA # 36133  
Guardian ad Litem

  
Margaret Kennedy WSBA # 27518  
Assistant Attorney General  
Attorney for Petitioner

## ORDER

Based on the foregoing Stipulation, it is ORDERED that

1. Daniel F. Quick, telephone number (206) 787-1417, is appointed to continue as independent legal counsel for Keiko Decker under the Court Order June 22, 2011, and shall be authorized to spend an additional forty (40) hours for work on this matter on behalf of the AIP, Keiko Decker;
2. Independent legal counsel shall be paid at private expense, with fees for representation subject to the Court's approval pursuant to RCW 11.92.180 and SPR 98.12. Legal counsel for Keiko Decker shall bill at the rate of \$250 per hour, and shall have further forty (40) hours of authority to represent Ms. Decker.

AGREED ORDER AUTHORIZING  
ADDITIONAL HOURS FOR LEGAL  
COUNSEL - 2

DANIEL QUICK, PLLC  
The Columbia Center  
701 5th Avenue #4720  
Seattle, Washington 98104  
(206) 787-1417

# Scanned Signature Page

3. Independent legal counsel shall not spend more than forty (40) hours representing Ms. Decker without prior court approval.

DATED this \_\_\_\_ day of July, 2011.

Honorable Judge/Court Commissioner

Presented By:

Approved as to Form,  
Notice of Presentation Waived

Daniel Quick, WSBA #26064  
Attorney for Keiko Decker

Stephen De Voght, WSBA # 36133  
Guardian ad Litem

Margaret Kennedy  
Margaret Kennedy, WSBA # 27358  
Assistant Attorney General  
Attorney for Petitioner

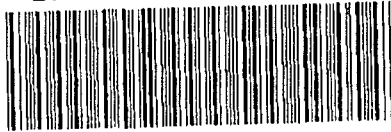
AGREED ORDER AUTHORIZING  
ADDITIONAL HOURS FOR LEGAL  
COUNSEL - 3

DANIEL QUICK, PLLC  
The Columbia Center  
701 5th Avenue #4720  
Seattle, Washington 98104  
(206) 787-1417

# **APPENDIX C**

**AGREED ORDER APPOINTING LIMITED  
GUARDIAN OF PERSON AND LIMITED  
GUARDIAN OF ESTATE  
Entered May 7, 2013  
("Agreed Guardian Order")**

**CP 84-96**



11-4-00294-5 40490418 ORAPGD 05-08-13

FILED  
IN COUNTY CLERK'S OFFICE

A.M. MAY 07 2013 P.M.  
PIERCE COUNTY WASHINGTON  
KEVIN STOCK, County Clerk  
By CT

IN THE SUPERIOR COURT OF STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

In the Guardianship of:

) Case No.: 11-4-00294-5

KEIKO DECKER

) Agreed Order Appointing  
) [X] Limited Guardian of Person  
) [ ] Full guardian of Person and/or  
) [X] Limited Guardian of Estate  
) [ ] Full Guardian of Estate  
) (ORAPGD)

Incapacitated Person

) CLERK'S ACTION REQUIRED

GUARDIANSHIP SUMMARY

<u>Date Guardian Appointed</u>	<u>May 7, 2013</u>
<u>Due Date for Report and Accounting</u>	<u>August 7, 2014</u>
<u>Date of Next Review</u>	<u>August 7, 2013</u>
<u>Letters Expire On:</u>	<u>May 7, 2018</u>
<u>Bond Amount</u>	<u>\$20,000</u>
<u>Restricted Account</u>	<u>To be addressed at the 90 day hearing</u>
<u>Agreements Required</u>	<u>Yes</u>
<u>Due Date for Inventory</u>	<u>August 7, 2013</u>
<u>Due Date for Care Plan</u>	<u>August 7, 2013</u>
<u>Right to Vote Revoked</u>	<u>No</u>

Incapacitated Person  
(IP)

Keiko Decker  
11607 55<sup>th</sup> Ave SW  
Lacey, WA 98499

Guardian of: Person and Estate

Maurice E Laufer  
4903 100<sup>th</sup> St SW #A Po Box 11063  
Lakewood, WA 98443  
Tacoma 98448 *Est*

Interested Parties	Address	Relation to IP
Jim Work	2832 Chambers Bay Drive Steilacoom, WA 98388	Family Friend

This Matter came on regularly for hearing on a Petition for Appointment of Guardian or Limited Guardian of KEIKO DECKER, the Alleged Incapacitated Person

☐ The Alleged Incapacitated Person was present in Court;

☐ The hearing was conducted outside of the courtroom at the location of the Alleged Incapacitated Person;

☒ The Alleged Incapacitated Person's presence was waived for good cause shown other than mere inconvenience and she was represented by her court- appointed attorney, Daniel Quick, at all times during the hearing to appoint the limited guardian of the estate for Keiko Decker. The Court finds that there is good cause not to require the attendance of Mrs Decker at the hearing

The Guardian ad Litem was present. The following other persons were also present at the hearing. Attorneys for Ms. Decker, Daniel Quick and Niomi Fisseha; Steve DeVoght, GAL; Assistant Attorney General Natalie Cooper; Maurice E. Laufer, proposed Guardian; Eileen Peterson, counsel for proposed guardian.

The Court considered the written report of the Guardian ad Litem and the Medical report of Dr. Stegman, the psychological report of Dr. Hill, the testimony of witnesses, remarks of counsel, and the documents filed herein. Based on the above, the Court makes the following

## I. Findings of Fact

### 1.1 Notices

All notices required by law have been given and proof of service as required by statute is on file.

### 1.2 Jurisdiction

The jurisdictional facts set forth in the petition are true and correct, and the Court has jurisdiction over the person and/or estate of the Alleged Incapacitated Person.

### 1.3 Guardian ad Litem

The Guardian ad Litem appointed by the Court has filed a report and supplemental reports with the Court. The reports are complete and comply with the requirements of RCW 11 88 090

### 1.4 Alternative Arrangements Made By the Alleged Incapacitated Person

☐ The Alleged Incapacitated Person did not make alternative arrangements for assistance, such as a power of attorney, prior to become incapacitated.

☒ The Alleged Incapacitated Person made alternative arrangements for assistance, but such arrangements are inadequate in the following respects:

Mrs. Decker executed a power of attorney instrument that is not in effect due to questions of Ms. Decker's capacity at the time she executed this document. Ms. Decker does not have the current capacity to execute a power of attorney instrument at this time.

☐ (Name) \_\_\_\_\_ has been acting in a fiduciary capacity for the Alleged Incapacitated Person and should NOT continue to do so for the following reasons:

### 1.5 Capacity

The Alleged Incapacitated Person, KEIKO DECKER, is:

☐ incapable of managing his or her personal affairs.

☐ incapable of managing his or her financial affairs

☐ The Alleged Incapacitated Person is in need of a full Guardianship over the  
☐ person ☐ estate.

☒ The Alleged Incapacitated Person is capable of managing some personal and/or financial affairs, but is in need of the protection and assistance of a limited Guardian of the  
☒ person ☒ estate in the areas as follows: Mrs. Decker is an 80 year old widowed woman who lives alone in her own Lakewood, WA home. She has been diagnosed with some dementia symptoms. She also suffers from other medical conditions which are detailed in the Sealed Guardian Ad Litem Report and Supplemental Report. With the assistance of a house cleaner and neighbors, Mrs. Decker has been able to provide for many of her activities of daily living including providing herself with meals and housekeeping.

Mrs. Decker is no longer able to appropriately manage her finances including the payment of her bills and taxes. She has a demonstrated inability to provide for her financial safety. She is at significant risk of financial harm based on her inability to independently manage her financial affairs.

Mrs. Decker has also recently been in a number of minor car accidents and should no longer be permitted to drive. She requires the assistance of a paid driver or taxi service to ensure she has transportation in order to transport her to and from appointments, the grocery store, or other locations.

Mrs. Decker may also need future assistance with medical decision making and in home care. The Guardian should notify the Court if Mrs. Decker needs additional assistance with her personal and healthcare needs. If a doctor determines that Mrs. Decker is unable to make her own informed consent decisions, the Guardian should have the power to make those decisions.

## 1.6 Guardian

The proposed Guardian is qualified to act as Guardian of the Person and/or Estate of the Incapacitated Person Proposed Guardian's address, phone numbers and email address are as follows

P.O. Box 44063, Tacoma, WA 98448  
Address: ~~4903 108<sup>th</sup> St SW #A, Lakewood, WA 98499, PO Box 39477, Lakewood, WA 98496~~  
Phone No(s). Business (253) 588-3101 Personal 253-279-4447  
Email: maurie@melauffer.com

## 1.7 Guardian ad Litem Fees and Costs

☒ The Guardian ad Litem was appointed at [ ] county expense ☒ estate expense and shall submit a motion for payment of fees and costs pursuant to the local rules.

The Guardian ad Litem has requested a fee of \$ 4847.50 for services rendered and reimbursement of \$ 37.00 for costs incurred while acting as Guardian ad Litem Fees in the amount of \$ 4847.50 and costs in the amount of \$ 37.00 are reasonable and should be paid as follows

☒ \$ 4847.50 by the Guardian from the guardianship estate and/or  
☐ \$ \_\_\_\_\_ by \_\_\_\_\_ for the following reason(s): \_\_\_\_\_

## 1.8 Bond

The assets of the Alleged Incapacitated Person

- ☐ are unknown, and Bond shall be reviewed at review of inventory.  
☐ total less than three thousand dollars (\$3,000) and no bond is required  
☒ exceed three thousand dollars (\$3,000), and a bond is required.  
☒ exceed three thousand dollars (\$3,000) and should be placed in a blocked account with an insured financial institution or bonded, unless the guardian is a bank or trust company.  
☐ are to be held by a nonprofit corporation authorized to act as Guardian, and the Court waives any bond requirement.

## 1.9 Right to Vote

The Alleged Incapacitated Person ☒ is [ ] is not capable of exercising the right to vote.

## II. Conclusions of Law

Based upon the above findings and fact, the court makes the following conclusions of law:



1 **2.1. Incapacitated Person**

2 KEIKO DECKER is an Incapacitated Person within the meaning of  
3 RCW Chapter 11.88, and a

4 ☐ Full ☒ Limited Guardian of the Person, and/or  
5 ☐ Full ☒ Limited Guardian of the Estate should be appointed

6 **2.2 Guardian**

7 Maurice Laufer is a fit and proper person as required by RCW 11.88.020 to be appointed as a  
8 guardian.

9 **2.3 Powers and Limitations of the Guardian**

10 The powers and limitations of the Guardian should be as follows

11 A. The powers and duties of a guardian of the estate pursuant to the provisions of  
12 Chapter 11.92 RCW; including statutory trust powers.

13 B. To undertake the management of the financial affairs of the incapacitated person,  
14 including but not limited to contracting for and incurring obligations on behalf of the  
15 incapacitated person becoming representative payee of any income from Social  
16 Security, Veteran's Administration, or Civil Service income to which the  
17 incapacitated person is entitled. and any other sources of revenue or income;

18 C. To locate and gather assets;

19 D. To enter any safe deposit box(es) held in the name of the incapacitated person  
20 (individually or with another), and inventory and/or remove any contents there from,  
21 and to maintain and/or close said box(es) or to add items thereto, or to drill open the  
22 safe deposit box(es) in the event the keys to the box(es) are misplaced or missing, as  
23 deemed by the guardian to be in the incapacitated person's best interests;

24 E. To close any financial accounts, including bank accounts held individually or jointly  
25 with another, and to make withdrawals, deposits or transfer of funds into or out of  
any such accounts, without the necessity of obtaining the written authority of any  
other person named on any such joint accounts;

F. To establish guardianship account(s);

- 1 G. To proceed to expend funds as necessary for the benefit of the incapacitated person  
2 subject to review by the Court;
- 3 H. To convert all holdings, including but not limited to, savings accounts, money  
4 market accounts, IRAs, mutual funds, stocks, bonds, cash, automobiles, mobile  
5 homes, and any other personal property, including pensions, annuities, 401Ks, and  
6 any other income, into the name of said guardian for the purposes of the  
7 guardianship; and all other reasonable duties required of a guardian;
- 8 I. Any bank, savings and loan, credit union, stock brokerage, insurance company, or  
9 other institution holding assets of the incapacitated person, including but not limited  
10 to cash, investments, stocks, bonds, certificates, funds, safe deposit box or personal  
11 property, shall release information or deliver the assets to the guardian as directed by  
12 the guardian;
- 13 J. The guardian is further authorized to remove the incapacitated person's name from  
14 any joint bank account and/or financial account and change the mailing address of  
15 any bank and/or financial statement to any address the guardian may request. In the  
16 event that an asset has signatories or co-owners in addition to the incapacitated  
17 person, the guardian shall have the authority to block all access to such account, safe  
18 deposit box or property until true ownership has been discovered;
- 19 K. The guardian is authorized to enter any dwelling, residence or storage area rented or  
20 owned by the incapacitated person, or access the land or property owned or rented  
21 (individually or with another) by the incapacitated person without the necessity of  
22 obtaining the written authority of any other person named on any such dwelling,  
23 land, property or storage area;
- 24 L. If it appears that the sale of real estate will be necessary to pay for the incapacitated  
25 person's expenses, the guardian shall have the authority to retain a real estate

1 appraiser to appraise said real estate, in order to petition the court for authority to sell  
2 the real property;

3 M. The guardian is authorized to make disbursements for nursing home care, medical  
4 expenses and incidental expenses on behalf of the incapacitated person;

5 N. The guardian shall also have authority to arrange pre-need cremation or burial  
6 arrangements as may be necessary;

7 O. The guardian shall have the authority to obtain any and all information and records  
8 from DSHS or other government agencies or entities;

9 P. The guardian shall have the authority to apply for any government assistance needed  
10 by the incapacitated person and to assist the incapacitated person in accordance with  
11 statute to accomplish receipt of benefits the incapacitated person is entitled to. The  
12 guardian shall have the authority to make arrangements for income tax reporting and  
13 making payment of income taxes. The guardian shall have the authority to invest  
14 and reinvest guardianship assets as provided in Ch. 11.100 RCW without further  
15 order of the court. The guardian shall have the authority of a trustee, as provided in  
16 RCW 11.98.070 for a period of time not exceeding one year from the date of this  
17 order or until the filing of the next annual report.

18 Q. The guardian shall make out and file within three (3) months after its appointment a  
19 verified inventory of the estate of the incapacitated person as required by RCW  
20 11.92.040(1), and file annually an accounting as required by RCW 11.92.040(2). A  
21 review hearing upon filing of the inventory is required.

22 R. The guardian shall report to the court within thirty (30) days any substantial change  
23 in the incapacitated person's condition, or any change in residence of the  
24 incapacitated person.

25 S. The term of review shall be annual.

T. This guardianship shall continue in effect until terminated pursuant to RCW 11.88.140

U. The Guardian for Mrs. Decker should also have the ability to disable Mrs. Decker's car as necessary if it is determined that she is unsafe to drive.

V. Mrs. Decker's stated wishes should be considered by the guardian in making any financial decisions on her behalf.

W. Mrs. Decker retains the right to remain in her home or the residence of her choice.

X. The Guardian shall have explicit power to provide Mrs. Decker with funds (pocket money for cabs, meals, hair etc.) in a manner that he deems appropriate.

## 2.4 Limitations and Restrictions Placed on the Incapacitated Person

The limitations and restrictions placed on the Incapacitated Person should be as follows:

- ☐ The right to vote is revoked.
- ☐ The right to marry or divorce is revoked
- ☒ The right to make or revoke a will is revoked
- ☒ The right to enter into a contract is revoked.
- ☒ The right to buy, sell, own, mortgage, or lease property is revoked.
- ☐ The right to possess a license to drive is revoked.
- ☐ The right to consent to or refuse medical treatment is revoked
- ☐ The right to decide who shall provide care and assistance is revoked.
- ☐ The right to make decisions regarding social aspects of your life is revoked
- ☒ Other: The Guardian shall have the authority to disable Mrs. Decker's vehicles in order to limit her ability to drive.
- ☒ If a doctor determines that Mrs. Decker is unable to make her own informed consent decisions, the guardian shall have that power.

## III. Order

### The court orders

#### 3.1 Prior Power of Attorney

Any Power of Attorney of any kind previously executed by the Incapacitated Person:

- ☐ is not canceled.
- ☒ is canceled in its entirety.

☐ is canceled in its entirety except for those provisions pertaining to health care.

### 3.2 Appointment of Guardian

Maurice Laufer is appointed as:

- ☐ Full ☒ Limited Guardian of the Person and/or  
☐ Full ☒ Limited Guardian of the Estate of KEIKO DECKER,

and the powers and limitations of the Guardian and the limitation and restrictions placed on the Incapacitated Person shall be as set forth in paragraphs 2.3 and 2.4 of the Conclusion of Law.

### 3.3 Letters of Guardianship/Limited Guardianship

The Clerk of the Court shall issue letters of

- ☐ Full ☒ Limited Guardianship of the Person and/or  
☐ Full ☒ Limited Guardianship of the Estate to KEIKO DECKER, upon the filing of an oath.

- ☒ Guardian must complete and file proof of completion of Mandatory Guardian Training or obtain an order waiving training.

### 3.4 Guardianship Bond and Security

- ☒ Guardianship bond in the amount of \$20,000 or  
☐ Bond is waived.  
☒ Bond shall be reviewed at review of inventory  
☒ The Guardian shall have access to the following accounts

The exact nature of Mrs. Decker's estate is unknown. The Court will address the issue of blocked accounts at the 90 day hearing upon the Guardian's filing of the initial Inventory.

All other accounts shall be blocked and the guardian shall file a Receipt of Funds into Blocked Account, form WPF GDN 04.0600, with the Court no later than 30 days from the date of this order:

If bond is waived, the Guardian is required to report to the Court if the total assets of the Incapacitated Person reaches or exceeds Three Thousand Dollars Pursuant to RCW 11.88.100, the Guardian of the Estate shall file a yearly statement showing the monthly income of the Incapacitated Person if said monthly income, excluding moneys from state or federal benefits, is over the sum of Five Hundred Dollars per month for any three consecutive months.

### 3.5 Report of Substantial Change in Income or Assets

Within 30 days of any substantial change in the Estate's income or assets, the Guardian of the Estate shall report to the Court and schedule a hearing. The purpose of the hearing will be for the

1 Court to consider changing the bond or making other provision in accordance with RCW  
11.88.100.

2 **3.6 Inventory**

3 Within three months of appointment, the Guardian of the Estate shall file a verified inventory of  
4 all the property of the Incapacitated Person, which has come into the Guardian's possession or  
5 knowledge. The inventory shall include a statement of all encumbrances, liens, and other secured  
6 charges on any item. A review hearing upon filing of the inventory [ X ] is required [ ] is not  
7 required.

7 **3.7 Disbursements**

8 On or before the date the inventory is due, the Guardian of the Estate shall also apply to the Court  
9 for an Order Authorizing Disbursements on behalf of the Incapacitated Person as required by  
RCW 11.92.040.

10 **3.8 Personal Care Plan**

11 Within three (3) months after appointment, the Guardian of the Person shall complete and file a  
12 Personal Care Plan that shall comply with the requirements of RCW 11.92 043(1) A review  
hearing is required.

13 **3.9 Status of Incapacitated Person**

14 Unless otherwise ordered, the Guardian of the Person shall file an annual report on the status of  
the Incapacitated Person that shall comply with the requirements of RCW 11 92 043(2).

15 **3.10 Substantial Change in Condition or Residence**

16 The Guardian of the Person shall report to the Court within thirty (30) days any substantial  
17 change in the Incapacitated Person's condition, or any change in residence of the Incapacitated  
Person.

18 **3.11 Designation of Standby Guardian**

19 The Guardian shall file a written notice designating a standby Guardian. The notice shall comply  
20 with the requirements of RCW 11.88.125.

21 **3.12 Authority for Investment and Expenditure**

22 The authority of the Guardian of the Estate for investment and expenditure of the Incapacitated  
23 Person's estate is as follows:  
24 See paragraph 2.3 above.  
25

### 3.13 Duration of Guardianship

This Guardianship shall continue in effect:

- ☐ until (date) \_\_\_\_\_; OR  
☒ until terminated pursuant to RCW 11 88 140,  
☐ until further order of the court. The necessity for the Guardianship to continue shall be periodically reviewed.

### 3.14 Discharge/Retention of Guardian ad Litem

- ☐ The Guardian ad Litem is discharged; OR  
☒ The Guardian ad Litem shall continue performing further duties or obligations as follows  
The Guardian ad Litem shall provide written comment on the issues reserved at the ninety (90) day review hearing

### 3.15 Notice of Right to Receive Pleadings

The following persons are in the categories of persons described in RCW 11.88.090(5)(d). The Guardian shall notify them of their right to file with the Court and serve upon the Guardian, or the Guardian's attorney, a request to receive copies of pleadings filed by the Guardian with respect to the Guardianship:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

### 3.16 Guardian Fees

- ☐ DSHS cases: The Guardian is allowed such fees and costs as permitted by the Washington Administrative Code in the amount of \$ \_\_\_\_\_ per month as a deduction from the Incapacitated Person's participation in the DSHS cost of care. Such fees are subject to Court review and approval. This deduction is approved for the initial 12 month reporting period and 90 days thereafter, from the date of this order to \_\_\_\_\_. The Guardian may petition for fees in excess of the above amount only on notice to the appropriate DSHS Regional Administrator per WAC 388.71; OR

- ☒ Non-DSHS cases: The Guardian shall petition the Court for approval of fees. The Guardian may advance himself/herself \$ 400 per month, subject to Court review and approval. *He will charge \$150 per month for financial matters and \$40 per hour for matters regarding the guardian of the pers.m.*

### 3.17 Guardian ad Litem Fee

- ☒ Fees and costs are approved as reasonable; OR

☒ The Guardian ad Litem fees and costs are approved as reasonable in the total amount of \$ ~~4884.50~~ They shall be paid from ☒ the Guardianship estate assets, ☐ the County, ☐ other source(s) as follows:.

### 3.18 Legal Fees

The legal fees and costs of Daniel Quick PLLC should be reserved until the 90 hearing and shall be paid from the:

☒ Guardianship estate assets. The Attorney for Ms. Decker is discharged.

*Daniel Quick PLLC May petition the court for additional fees and costs up until the 90 day hearing.*

### 3.19 Guardian's Report

The Guardian's report shall cover the:

☒ 12 (twelve)-month ☐ 24 (twenty-four)-month ☐ 36 (thirty-six)-month

period following the appointment. The Guardian's report is due within 90 days of the end of the reporting period and shall comply with the requirements of RCW 11.92.040(2) 11.92.043(2).

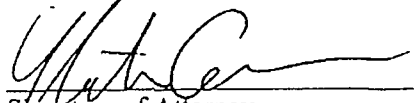
### 3.20 Reserved Issues.

At the ninety (90) day review hearing, the Guardian shall address the issue of recovery of assets.

Dated: 5/7/13

  
Judge/Court Commissioner

Presented by:

  
Signature of Attorney

NATALIE K.A. COOPER, WSBA #343168

Printed Name of Attorney, WSBA/CPG #

PO Box 40124

Address

360-586-6485 / 360-586-6659

Telephone/Fax Number

Olympia, WA 98504-0124

City, State, Zip code

NatalieC@atg.wa.gov

Email Address



1 Approved for Entry

2 

3 STEPHEN DEVOGHT, WSBA #36133  
Guardian ad Litem for Keiko Decker

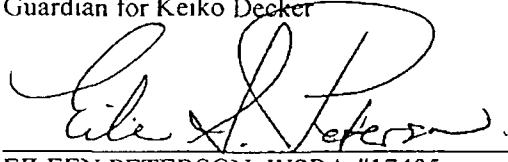
4 

5 DANIEL QUICK, WSBA #26064  
-6 Attorney for Keiko Decker

Approved for Entry:

*represented by counsel*

MAURICE E LAUFER  
Guardian for Keiko Decker



EILEEN PETERSON, WSBA #17405  
Attorney for Guardian

# **APPENDIX D**

**TRANSCRIPT OF PROCEEDING BEFORE  
COMMISSIONER MARY DICKE RE: FEE  
DETERMINATION  
August 7, 2013**

**CP 339-380**

1 SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

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In Re:

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GUARDIANSHIP OF KEIKO DECKER

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No. 11-4-00294-5

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TRANSCRIPT OF PROCEEDINGS

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BEFORE THE HONORABLE

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MARY DICKE

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AUGUST 7, 2013

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RECORDING TRANSCRIBED BY:

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CHERYL J. HAMMER, RPR, CCR 2512



A P P E A R A N C E S

FOR THE GUARDIAN:

EILEEN S. PETERSON  
Gordon Thomas Honeywell  
1201 Pacific Avenue, Suite 2100  
Tacoma, Washington 98402  
253.620.6500  
epeterson@gth-law.com

FOR ADULT PROTECTIVE SERVICES:

NATALIE K. COOPER  
Assistant Attorney General  
7141 Cleanwater Drive SW  
Olympia, Washington 98501  
360.586.6659  
nataliec@atg.wa.gov

FORMERLY REPRESENTING KEIKO DECKER:

DANIEL F. QUICK  
Daniel Quick, PLLC  
701 Fifth Avenue, Suite 4720  
Seattle, Washington 98104  
206.778.1417  
daniel@danielquick.com

ALSO PRESENT: Maurice Laufer, Guardian  
Stephen DeVoght, Guardian ad Litem

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I N D E X

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(BEGINNING OF TRANSCRIPTION)

(RECORDING BEGINS AT 1:51 P.M.)

MS. PETERSON: Good afternoon, Your Honor. For the record, my name is Eileen Peterson, and to my left is Maurice Laufer, who is guardian for Keiko Decker. I'll let the other parties introduce themselves.

MS. COOPER: Natalie Cooper representing Adult Protective Services, the petitioner.

MR. QUICK: And Your Honor, for the record, Daniel Quick appearing. I guess I am the former attorney, no longer the current attorney, for the at the time alleged incapacitated person.

MR. DeVOGHT: Stephen DeVoght, guardian ad litem for Keiko Decker.

MS. PETERSON: Your Honor, if I may, perhaps we could handle the interim report first. I know there is another matter regarding fees, and it might be helpful to provide the court some context in analyzing that issue.

Before the court, from the guardian, is an interim report, an inventory, and also a care

1 assessment from Sound Options. Mr. Laufer was Ms.  
2 Decker's accountant, and she asked that he serve as  
3 guardian. Regardless of that request, she has been  
4 less than cooperative, although things are starting to  
5 settle down or we are hoping they are.

6 We provided an inventory for the  
7 court. It was helpful because Mr. Laufer is an  
8 accountant and he was able to do all the detail of  
9 that work, and the court will see there's about  
10 700,000 of cash and investments. We provided a budget  
11 for the court. There is a significant income stream.

12 We did our best guess originally with  
13 regard to bond, and we think \$20,000 for the bond is  
14 sufficient with the remainder of the assets locked.

15 A couple of comments, though. The  
16 court originally allowed for us to handle pocket money  
17 in cash in a way that the guardian deemed appropriate.  
18 He was suspicious that there is significant cash in  
19 the home. He does not think it will help the  
20 relationship if he were to search the home and so I'm  
21 hoping that he'll be excused from that.

22 The investments will need to be  
23 analyzed at a later date and they'll come back before  
24 the court, either this court or upon our first report  
25 we ask for permission if we think there's something

1 that needs to be done there.

2 The care assessment was an excellent  
3 care assessment. We're trying to facilitate medical  
4 assistance to the extent that Ms. Decker will allow  
5 it. We're trying to make sure that she's safe in her  
6 home. The guardian believes she is safe, but wants to  
7 make sure that somebody's checking on her.

8 So we're looking at perhaps some  
9 companion who's maybe a female that can assist and  
10 simply bolster her quality of life.

11 The car was an issue when the court  
12 first heard about this matter. Ms. Decker is refusing  
13 to take a driver's assessment. Neighbors and Mr.  
14 Laufer believe she is a danger on the road, and he  
15 believes it's prudent to sell the car now as opposed  
16 to later or within a reasonable period of time. So we  
17 are requesting authority to sell the vehicle.

18 We had originally made an appointment  
19 with Chris Neal to talk about standby guardian. That  
20 was scheduled last week, but we needed to reschedule  
21 it for tomorrow, and that will happen tomorrow. Mr.  
22 Neal charges a fee for being standby guardian. He  
23 wants to know about the case in case he has to step  
24 in.

25 I'm assuming that he will be



1 acceptable, but until the parties meet, I'm not sure  
2 about that. So we are asking permission to pay for  
3 that service.

4 Mr. Decker died prior to the petition  
5 for guardianship. There are a couple of CDs that have  
6 his name on it. A guardian cannot take control of  
7 those CDs, and the home is still in the joint name.  
8 So we're asking permission to start a probate in due  
9 course. That wouldn't be top on my list, but it needs  
10 to happen, and so we're asking for permission.

11 I can only say that Mr. Laufer has  
12 done an extraordinary job in the time that he's had.  
13 One of his assignments was to review claims against  
14 third parties for exploitation. He has started that  
15 process, but we need an extension of time on that  
16 issue.

17 And then finally, we're requesting  
18 both guardian fees and legal fees at this time. So  
19 I'm happy to answer questions if the court has them.

20 THE COURT: Let me just hear any  
21 (inaudible) from the guardian ad litem (inaudible)  
22 appropriate. Any comments, or...

23 MR. DeVOGHT: Well, my understanding  
24 is that I was to look at further issues. I did review  
25 the report and it does seem in line of my

1 understanding of Ms. Decker and it appears Mr. Laufer.

2 In fact, I had one phone conversation  
3 with him in the period and he is doing an admiral,  
4 admiral job working with Ms. Decker. As everyone in  
5 this courtroom -- or in this line can attest, she's a  
6 challenging person to work with.

7 MS. PETERSON: And she was invited  
8 today.

9 THE COURT: So any comments?

10 MR. DeVOGHT: I don't have any  
11 comments about the report. I felt my further  
12 authority was based on issues that were reserved, and  
13 that was primarily the attorney fees.

14 THE COURT: And so shall we hear the  
15 request for attorney's fees (inaudible) and further  
16 comments, or...

17 MS. COOPER: That seems fine. The  
18 department has no objection to the guardian report.

19 THE COURT: Car is always an issue.

20 MS. PETERSON: I know, Your Honor. I  
21 know.

22 THE COURT: I think it makes sense to  
23 get the car settled sooner than later.

24 MS. PETERSON: Okay.

25 THE COURT: Mr. Quick.

1 MR. QUICK: Yes, Your Honor. Well,  
2 did you want me to argue on fees, Your Honor? I mean,  
3 I normally sort of receive a more strenuous objection,  
4 quite honestly, if there's an objection to my fees. I  
5 mean, I give a detailed fee declaration. I'm happy to  
6 answer any questions.

7 THE COURT: Well, I think why don't  
8 you summarize what you're asking for. There have been  
9 some objections to the fees, and so I think  
10 (inaudible) certainly there was an objection to going  
11 in excess of what the court authorized without further  
12 court permission.

13 Everyone acknowledges this was a  
14 challenging case that brings us here today. Having  
15 this report (inaudible). So we are mindful of that.

16 MR. QUICK: Certainly, Your Honor.  
17 And I'm going to try to keep it short. I mean, I can  
18 argue this subject for an hour if you'd like.

19 THE COURT: (Inaudible.)

20 MR. QUICK: So it's pretty clear I was  
21 hired initially by the GAL. Essentially, I was hired  
22 by the State of Washington to do a job, to defend her.  
23 She later signed a private contract with me. She was  
24 not an incapacitated person at that time.

25 That was an independent contract

1 signed, of course reviewable by the court, but a  
2 private contractual relationship between myself and  
3 Ms. Decker on top of the court order.

4 As you can see here, I cited this in  
5 my fee, declaration RCW 11.88.045, in addition to  
6 other authority. She really told me what to do most  
7 of the time. I went down and had many meetings. I  
8 had extra witnesses at those meetings, people from my  
9 office.

10 She told me she wanted a vigorous  
11 defense, and in fact that's what she got for, was it,  
12 26 months, 24 months, something like? So we defended.

13 It is not an easy thing to take on the  
14 State of Washington. I do other counsel. This is not  
15 an easy thing litigating against the government,  
16 people who have unlimited staff and resources and, you  
17 know, we're just two people.

18 So Keiko quite clearly told me what to  
19 do here. I tried many times to explain settlement  
20 options and do the right thing. I mean, I have a very  
21 active practice. I'm not one of those attorneys who  
22 sits around looking for work. I have lots of cases.  
23 So I was trying to get the best solution for her.

24 But as you can see, it's well  
25 documented, Exhibit 3 of my fee declaration, all of my

1 notes, Keiko gave me very specific instructions. And  
 2 in fact by law I'm not entitled to even deviate from  
 3 those. I have continuously talked to her about  
 4 settlement. She wanted to fight, fight, fight.  
 5 That's what she got, a vigorous defense.

6 There were discovery issues. It's  
 7 just normal discovery issues. It was nothing out of  
 8 the ordinary, I mean.

9 THE COURT: So what is your total  
 10 requests? And there was some concern about duplicate,  
 11 I guess, time.

12 MR. QUICK: Your Honor, this is --  
 13 there's always issues like this. I mean, there were  
 14 also several review hearings. I mean, there were,  
 15 what, five or eight, 10 review hearings that we came  
 16 down to that we agreed I wouldn't show up at to save  
 17 fees.

18 We did everything we could in this  
 19 case. It was a big, ugly, messy litigation that  
 20 included several dispositive motions on both sides,  
 21 including taking certain items upon revision. And so  
 22 this is a complicated case and it went on for 26  
 23 months.

24 If you were to take -- I believe the  
 25 total bill. I don't have a total here, it's over is

1 it 120 or something like that. But even if you divide  
2 those by that 22 months, it's like 4 or \$5,000 a month  
3 to litigate against the State of Washington.

4 So again, the way I normally handle  
5 these disputes, if people want to make objections, you  
6 cannot simply object to the total dollar figure. You  
7 go through line by line and you have to object to it.  
8 Now, that's a lot of work, but what happens is when  
9 people sit down and have to go line by line to do an  
10 objection, as Your Honor knows, you find out that  
11 these cases are a lot of work.

12 It's as much work oftentimes to object  
13 to it as to do the work itself. People don't want to  
14 sit down. The proper way to object -- and these are  
15 the objections that I haven't seen -- are the specific  
16 time entries.

17 I litigate things aggressively.  
18 That's what I do, that's who I am, and those were the  
19 instructions my client gave me. But it's -- I guess,  
20 Your Honor, I'm happy to respond to any specific  
21 objections, but that's it.

22 THE COURT: Regardless of the  
23 contract, you still are under a court order only to do  
24 a certain amount of work without further court  
25 authority. So you kind of took your own risk in that

1 regard, because the court is always mindful of  
2 maintaining a substantial amount, try to limit  
3 litigation costs and keep as much money available for  
4 the alleged incapacitated person.

5 And that's why we put limits, because  
6 we want to have some oversight. (Inaudible) went out  
7 on a limb at your own risk.

8 MR. QUICK: Well, yes, Your Honor, I  
9 understand what you said, but of course for me it's  
10 kind of the chicken and the egg. She has not been  
11 adjudicated incapacitated, and even now she's  
12 resistant to this and independent. She has a right to  
13 defend herself. She has a right.

14 Simply because it's a guardianship  
15 proceeding doesn't mean that she can't use her own  
16 money. I understand there's court oversight, but at  
17 the same time, Your Honor, I --

18 THE COURT: People do come back and  
19 ask for addition (inaudible).

20 MR. QUICK: Certainly, Your Honor.  
21 And by the way, which court order are the parties  
22 referring to here? There was an initial court order  
23 that gave me some authority. Is that what Your  
24 Honor's going back to, one of your original orders at  
25 the beginning? I'm just curious what that authority

1 was. I've missed that point slightly.

2 MS. PETERSON: I believe they're  
3 attached to some of the pleadings. I believe there  
4 was 10 hours and then there was an additional 40  
5 hours, and those orders are drafted in an interesting  
6 way. It looks like they were stipulated.

7 THE COURT: So 50 hours.

8 MR. QUICK: Yes, Your Honor, and I  
9 don't deny that. But again, this was an ongoing  
10 proceeding. I didn't have a choice. I don't have a  
11 choice to not defend. I mean, the choice here is to  
12 throw Keiko under the bus and simply let the  
13 guardianship get imposed, and that was against her  
14 express wishes. And that's the choice that I faced  
15 right there, not just in this case, but in other  
16 cases. That's the choice.

17 I understand that the court has  
18 ultimate authority over it. You know, for me, I come  
19 down, my clients are generally happy. I do a good  
20 job. This guardianship proceeding went on much longer  
21 than it should have for a number of reasons, not just  
22 my vigorous defense, but I think we changed three or  
23 four times the prosecutor.

24 So one gal who'd done all the trials,  
25 she went into private practice. There were a lot of



1 things going on here, but I know that my client  
2 received a vigorous defense, and Your Honor even  
3 complimented me on this.

4 THE COURT: No, I am not disputing the  
5 fact that you actively defended her wishes.

6 MR. QUICK: Thank you, Your Honor. I  
7 don't know what else to add. You know, again, I do a  
8 lot of these fee disputes. I was just trying to give  
9 you a taste of what it's like when I analyze this kind  
10 of thing.

11 I think I have briefed the issues.  
12 Keiko told me what to do, she got a vigorous defense,  
13 and I believe the fees are actually reasonable and the  
14 \$250 rate is certainly low for litigation. I'm happy  
15 to answer any other questions, Your Honor.

16 THE COURT: Let me hear your response.

17 MS. COOPER: The department doesn't  
18 practice in the defense of guardianships and isn't in  
19 a position to know what a standard guardianship  
20 proceeding would look like. However, this  
21 guardianship was by far the most fees that I or anyone  
22 in my firm have seen.

23 Also, by the very nature of a  
24 guardianship proceeding, Ms. Decker's capacity was at  
25 issue to begin with and I think that deviating from

1 the court's approved fee was inappropriate, especially  
2 when the subsequent fees were more than \$80,000  
3 afterwards and this woman was under investigation by  
4 Adult Protective Services for financial exploitation  
5 in the first place.

6 Many of the months that we've spent  
7 after the guardianship was originally filed were spent  
8 just waiting for the guardian ad litem reports to  
9 become finished, at which point there was really not a  
10 logistical issue. We didn't know what the  
11 recommendation of the guardian ad litem was going to  
12 be, whether he was going to recommend a guardian or  
13 not.

14 So to allege that approximately \$4,000  
15 a month during that time period was appropriate, I  
16 just don't, I don't think that that's tenable.

17 Also, nothing was actually effectively  
18 taken up on revision. Mr. Quick attempted to file a  
19 motion for revision on two separate occasions, but  
20 improperly noted them and they were not heard. I  
21 don't believe he should be compensated for that time.

22 MR. QUICK: And Your Honor, I object  
23 to that, because actually they were properly noted.  
24 They just, you know, we had this rule in King County  
25 where you just have to call back the week before to

1 renote it and that's what was done.

2                   The court in fact still has discretion  
3 to hear the matter under the rule, but they didn't.  
4 That's actually what happened there.

5                   In addition, one of the dispositive  
6 motions was filed by the state itself, a motion to  
7 dismiss the case, and so that was -- took work. It  
8 wasn't just a one-sided litigation here, Your Honor.

9                   THE COURT: Ms. Peterson.

10                   MS. PETERSON: I'd like to make some  
11 comments. Did you want to hear from the guardian ad  
12 litem first, or...

13                   MR. DeVOGHT: Did you have chance to  
14 review my report? I tried to keep to the facts and  
15 kind of conserve the assets of Ms. Decker in regard to  
16 this. I guess my primary issue that I feel I raised  
17 for the court was that authority was not properly  
18 granted and the other questions that come to mind.

19                   My practice around -- I think most  
20 people's practice around guardianship is if there is  
21 an alleged incapacitated person involved, there's a  
22 heightened scrutiny around issues regarding costs to  
23 that person.

24                   Not getting the authority. I think,  
25 you know, you asked about the orders. There were two

1 orders. There was an order that I initially drafted  
2 and it was stipulated, because the Attorney General  
3 saved the time and for other parties to come and  
4 presented that herself.

5 And the second one was drafted by Mr.  
6 Quick, who was also, I believe, presented by the  
7 Attorney General to avoid travel time and extra costs  
8 and in that -- in both of the orders it clearly stated  
9 that prior authority would be required from the court  
10 before any additional hours of authority.

11 And so by not doing that, as you  
12 alluded to, that the court had no oversight of the way  
13 the fees were going in this case and didn't have the  
14 opportunity to protect Ms. Decker's assets if they  
15 felt that was an issue.

16 You know, there's months that are  
17 reported, invoices that have 80 hours of work for  
18 various items, and I would have to wonder if those  
19 were requested in advance whether the court would have  
20 granted 80 hours to work on a motion to revision.

21 I think that bypassing that may -- you  
22 know, we can't say what -- we can't go back and say  
23 what would have happened, but I think some direction  
24 from the court regarding fees as they're being  
25 incurred could have shortened the time frame on this

1 matter.

2 I was not aware that Mr. Quick was  
3 being paid for any of the work until earlier this  
4 year, actually, the meeting in April, I believe, prior  
5 to the final hearing on the matter, and I've never --  
6 it's unprecedented in my experience to see someone be  
7 paid without approval of the court.

8 And I'm not arguing legal, you know, I  
9 just haven't seen that happen and Mr. Quick, I'm sure,  
10 has legal authority regarding that, but I think that  
11 there are a couple issues.

12 The first invoice that's presented is  
13 not an invoice. It's just a listing of an accounting  
14 detail with day by day that covers approximately a  
15 year in time and there's no totals. As I attached to  
16 my report, there are checks that cleared during that  
17 period written by Ms. Decker and there's not invoices  
18 attached to those.

19 MR. QUICK: And Your Honor, just for  
20 clarification, I had to reprint some old bills from  
21 2011 and that's how they reprint. Those were not the  
22 actual bills. It's part of it's a reprint. This is  
23 what happens when we do these fee petitions.

24 THE COURT: Sure. How much was paid  
25 by Ms. Decker?

1 MS. PETERSON: According to the  
2 guardian's files, \$110,492.

3 MR. QUICK: That's probably accurate,  
4 Your Honor. I can't say specifically, but that's  
5 probably about accurate. There is, again, a bunch of  
6 time there are no charges in there, Your Honor. And  
7 again, although the court does have authority over  
8 this, at the time she was not an incapacitated person.

9 I understand there was a guardianship  
10 proceeding that was filed six months or a year after  
11 her husband died, but we had a separate contractual  
12 relationship at the beginning after the court order  
13 time. And I'm assuming that that's why I didn't come  
14 back for a follow-up order. Again, I don't remember  
15 specifically.

16 THE COURT: Proceed.

17 MR. DeVOGHT: I guess I'll just  
18 address that. My understanding is that the court has  
19 authority over all attorney fees in a guardianship  
20 matter, and that also that where there's a court order  
21 in place, that that order should be followed.

22 I think there's the potential -- and  
23 as I said, we can't go back. I think there's the  
24 potential that fees and potentially the case as a  
25 whole would have been -- would have resolved much

1 quicker with some direction from the court regarding  
2 fees.

3 And whether the court -- and if  
4 additional -- at the time fees are requested, whether  
5 there were objections from myself as guardian ad litem  
6 or the state about reasonableness and kind of set some  
7 parameters before taking on the defense or the  
8 representation.

9 So looking back and seeing a month of  
10 \$80 -- I'm sorry -- 80 attorney hours billed in a  
11 month, and then I think even having some contract  
12 attorney on top of that, my -- you know, I've  
13 represented (unintelligible) a handful of times, but  
14 my understanding is if I'm in a contract with an  
15 outside attorney, I'm going to get court approval for  
16 that. I'm going to get court approval for any amount  
17 of work I do.

18 From my training, I expect not to be  
19 paid for anything that I don't get approval for. I  
20 book -- I do believe the court has discretion to  
21 authorize payment. I'm going to go back to the  
22 understanding that Mr. Quick had been getting paid  
23 since sometime in -- I guess shortly after the  
24 representation began. I only was aware of that this  
25 year.

1                   Again, I haven't seen that before, and  
2 I think that that -- but I'm not sure what to say. I  
3 mean, I've never seen that happen. Even the examples  
4 that he provided, all of the payments that were  
5 authorized were to be paid from an estate or to be  
6 paid to him. They weren't approving fees in the past.

7                   So maybe that's an experience that  
8 he's had, but I have not been an attorney  
9 (undecipherable). So that's not something I've seen.

10                  THE COURT: Any additional comments?

11                  MR. DeVOGHT: Oh, yes. Within the  
12 billing statements, because it was raised a little bit  
13 here, another thing I haven't seen in my guardianship  
14 practice and being appointed as GAL in at least 30  
15 cases, is having an associate come to hearings that,  
16 you know, as you know, often hearings are five minutes  
17 in length and so paying -- you know, charging a client  
18 for three hours for an attorney and three hours for an  
19 associate to appear at a hearing, that that -- I don't  
20 believe that was in Ms. Decker's best interest.  
21 There's no added value for having a second attorney  
22 present at many of these, at most, if not all, the  
23 hearings.

24                  I think Mr. Quick raised a valid point  
25 about having a witness to certain instructions she may



1 have, you know, Ms. Decker may have given him, but I  
2 think the court should look carefully at whether those  
3 fees were in the interest of the client and reasonable  
4 in that context.

5 THE COURT: (Inaudible.)

6 MR. DeVOGHT: Not at this time, Your  
7 Honor, I don't, unless you have questions.

8 THE COURT: (Inaudible.)

9 MS. PETERSON: Well, Your Honor,  
10 initially I just wanted to step back and say I wasn't  
11 involved, and I struggled with that position given my  
12 representation of the guardian and also as an officer  
13 of the court. I am not comfortable being here and  
14 being in this position, but I'm going to make some  
15 comments.

16 I said that there has been \$110,000  
17 paid. Apparently there's an additional 54 hours or  
18 something in excess of that to defend fees. I think  
19 that various parties, including the court, mentioned  
20 the balancing test that needs to occur here.

21 Clearly Ms. Decker was in a position  
22 where she may lose some constitutional rights. I take  
23 absolute exception with regard to the briefing that  
24 includes that Ms. Decker may lose where she lives.  
25 That's absolutely not the law. There is an explicit

1 statute that says the only way that you will be  
2 displaced from your home is through the Involuntary  
3 Treatment Act.

4 And I hope Ms. Decker was not told  
5 that she might lose the right to stay in her home,  
6 because that is what we're working really hard on.

7 So certainly there's a right to a  
8 defense, but on the other hand, the court needs to  
9 determine whether or not there are reasonable fees. I  
10 did provide to the court one piece of paper, and  
11 that's our professional responsibility rule with  
12 regard to what is reasonable.

13 And I think that's particularly  
14 important when you have an ultimate finding of  
15 incapacity, but even alleged incapacity. This case  
16 came before the court on Adult Protection Services'  
17 concern about exploitation by third parties. In other  
18 words, whether she had capacity or not, it looked like  
19 she was quite vulnerable.

20 Maybe it ends with the court order,  
21 because it is an unusual court order, that talks about  
22 no further fees, and maybe that becomes the law in  
23 this case, but if the court deems that there should be  
24 an additional award of fees, I think there does need  
25 to be analysis of what's reasonable.

1 I really have no objection to the  
2 hourly rate of Mr. Quick. What I don't understand in  
3 reading quickly the statements, I see the initials JV,  
4 NF, KA, JG. I don't know who those people are, I  
5 don't have a total for how much they spent in terms of  
6 working on the matter and why they worked on the  
7 matter.

8 There is also a notation in several  
9 places talking about BL[phonetic]Keaton, I believe a  
10 contract attorney, and it says bill attached. It is  
11 not attached. I don't know why that time was  
12 necessary.

13 I saw in the court file, just  
14 reviewing it, there was a request to, I think,  
15 associate Sheila Ridgeway from Seattle. That order  
16 was never entered. There was some deficiency in terms  
17 of people signing that document.

18 Regardless, Your Honor, I've practiced  
19 in this area 25 years, and, I am sorry, the amount is  
20 shocking. I think it's excessive. I've handled  
21 significant complicated matters before this court for  
22 years. I have a little higher billing rate, but I've  
23 represented petitioners, guardian ad litem, attorney  
24 for the alleged incapacitated person.

25 Maybe I have kind of a weird thinking,

1 but when I get before the court and I ask for anything  
2 around \$20,000, I have significant questions about how  
3 efficient I was, even with difficult personalities.

4 Your Honor, Mr. Quick, I think, was  
5 asked to represent because he has Japanese abilities  
6 and that, I think, is a very good thing. I think he  
7 had a very difficult client. He also had to come from  
8 Seattle.

9 I have to comment that I've never seen  
10 an attorney draft a power of attorney to himself  
11 before. Even upon a request, I don't do that in my  
12 estate planning practice with my clients. I never  
13 would do that.

14 It appears there were two  
15 cross-motions to dismiss and then there was an agreed  
16 order regarding the guardianship. When I entered this  
17 case, I asked Mr. Laufer if he had met with Ms.  
18 Decker. He had not, and so there may have been some  
19 facilitation, but not very much, because I wanted to  
20 make sure that they could work together and so Mr.  
21 Laufer did meet with her.

22 Oftentimes I look to the amount of  
23 fees of the parties to determine how complicated the  
24 matter is. The State of Washington doesn't have a fee  
25 declaration, so we can't look to that, but I did note

1 that the guardian ad litem had fees of \$4,847.

2 Your Honor, it's really, really,  
3 really hard to look at the detail line by line of a  
4 fee declaration. I wish it was that easy. It's not.  
5 I suggest that the court think about good attorneys  
6 give a good defense in a guardianship matter and the  
7 kind of fees that are generally awarded.

8 I would include people like Mike  
9 Smith, Judson Gray, Alece Cox in that area. All very,  
10 very capable, and they get the job done.

11 There's also another approach that the  
12 court could think about, and that is that maybe  
13 appoint one of those attorneys, because they are all  
14 litigators, and review the fee declaration and make  
15 some recommendations to the court.

16 Your Honor, I'm really sad about the  
17 billing. I'm sad --

18 MR. QUICK: Your Honor, I object to  
19 this. This has been going on. She's giving opinion  
20 here. Please state the argument. I've been putting  
21 up with personal attacks for 15 minutes, Your Honor.  
22 Thank you.

23 THE COURT: I'm going to let Ms.  
24 Peterson finish.

25 MR. QUICK: Thank you, Your Honor.

1 MS. PETERSON: I'm sad about the  
2 acceptance of the fees. I understand making sure your  
3 client is aware of the time incurred. If there was  
4 money that came to Mr. Quick, it should have been put  
5 into the trust account.

6 I am in a difficult position. If the  
7 court orders less than the amount of fees that have  
8 been paid, then the guardian has to work to get that  
9 money for Ms. Decker. So if that is the direction the  
10 court's going to go today, I would ask that the court  
11 gives us the right to come back and attain a judgment  
12 if it's not paid within a certain period of time.

13 Thank you, Your Honor.

14 THE COURT: Mr. Quick, you know,  
15 again, I don't know how often you practice in this  
16 area. I'm not disputing your fee. Ms. Decker is  
17 difficult, as everyone says, and acknowledges that  
18 even to this day. She's probably further declined  
19 from when you were first working with her.

20 But I still don't understand if you  
21 have -- when you have a vulnerable, someone that  
22 people are concerned about is vulnerable, basically  
23 the safest thing is just to let the court decide  
24 what's reasonable or not. You can't just take  
25 (inaudible). So you've totally put yourself in a

1 position of (inaudible) and so the question is really  
2 how much.

3 \$100,000 plus is not reasonable in  
4 this kind of matter. No matter how hard or difficult  
5 Ms. Decker is, no matter how much of a defense she  
6 wants, you still have to be mindful of, you know, what  
7 kind of context this is. So, you know, I don't know  
8 what to say. You're authorized from (inaudible)  
9 calculation is like \$12,500 is what the court okayed.

10 Now, I think that given the difficulty  
11 and the fact ultimately some additional funds over and  
12 above what was initially authorized makes sense, but  
13 nowhere near the 110 that you've already, I guess,  
14 received.

15 And I have to agree, it is somewhat  
16 unusual in the context of someone that's being brought  
17 before the court for concerns about exploitation to be  
18 receiving funds without the court's blessing.

19 MR. QUICK: So Your Honor, am I  
20 allowed to make a statement?

21 THE COURT: Yeah.

22 MR. QUICK: I will keep it short, Your  
23 Honor. Just a few things I want to get on the record.

24 THE COURT: Okay.

25 MR. QUICK: Should I hear a ruling,

1 first? I guess I don't...

2 THE COURT: Well, my inclination is,  
3 you know, and this even compared to other cases that I  
4 have is a pretty generous ruling, I mean, and I'm not  
5 sure what Ms. Peterson would say, but given the  
6 difficulty of Ms. Decker and she still presents  
7 difficulty, I'd be inclined to order \$30,000.

8 MR. QUICK: I'm sorry?

9 THE COURT: 30,000.

10 MR. QUICK: For?

11 THE COURT: For your fees, total.

12 MR. QUICK: Total fees of 30,000? So  
13 Your Honor, I'll just make a short statement. One of  
14 the things that happens to me in my cases, my cases I  
15 do litigations that go on for a long time. This went  
16 on for 26 months, and the single biggest reason that  
17 it went on for 26 month was the prosecution by the  
18 state was not diligent and they switched attorneys  
19 many times. That's the single biggest reason this  
20 went on.

21 The initial GAL report also did not  
22 have a finding of incapacity, and that she was  
23 entitled to a private defense and that is exactly what  
24 she got. I agree with the court that occasionally I  
25 stick my neck on the line for clients. I do do that



1 because I care about this work very much.

2 And I have been practicing in this  
3 area 17 years as an attorney, 20 years in the legal  
4 field, and this is what I do all the time, litigation.  
5 I don't run from the tough cases. I seek them out.  
6 That's what I do, that's what I'm known for. I  
7 documented that in the file as well.

8 I understand that we have ongoing  
9 court orders for additional time and so forth. Those  
10 are intended in a lot of cases as, I won't use the  
11 word procedural, but something procedural. The one  
12 thing they're not intended to be is to be used as a  
13 hammer in a fee dispute at the end of a case.  
14 Certainly not when the client is happy with the  
15 representation.

16 Apart from that, Your Honor, I think  
17 I've documented the file all I can. I expect that  
18 we'll take this up on revision, so...

19 Thank you, Your Honor. I do  
20 appreciate the time and to all the parties.

21 MS. PETERSON: I understand there may  
22 be a motion for revision here, but I do believe what  
23 I'm understanding the court to say is the difference  
24 between 30 and 110 is to be paid to the guardian. Is  
25 there a timeline on that, Your Honor?

1 THE COURT: (Inaudible.) Six months.

2 MS. PETERSON: Thank you. We'll

3 prepare an order, Your Honor. Thank you.

4 MR. QUICK: Just send me a copy of the  
5 order.

6 MS. PETERSON: You have to sign it.  
7 Sorry.

8 (END OF RECORDING AT 2:26 P.M.)

9 (END OF TRANSCRIPTION)

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TRANSCRIPTION CERTIFICATE

I, CHERYL J. HAMMER, the undersigned  
Certified Court Reporter in and for the state of  
Washington, do hereby certify:

That the foregoing transcript was  
transcribed under my direction; that the transcript is  
true and accurate to the best of my knowledge and  
ability to hear the audio; that I am not a relative or  
employee of any attorney or counsel employed by the  
parties hereto; nor am I financially interested in the  
event of the cause.

WITNESS MY HAND this 15th day of August  
2013.

*Cheryl J. Hammer*

CHERYL J. HAMMER  
Certified Court Reporter  
CCR No. 2512  
chammer@yomreporting.com

	27:21	23:17	4:18 7:21	allowed
\$	17		16:8, 17:11	5:16 29:20
\$100,000	31:3	7	21:5 25:23	alluded
29:3	1:51	700,000	27:1	18:12
\$110,000	4:4	5:10	add	amount
23:16			15:7	12:24 13:2
\$110,492	2	8	added	21:16 25:19
20:2	20	80	22:21	26:22 28:7
\$12,500	31:3	18:17,20	addition	analysis
29:9	2011	21:10	10:5 13:19	24:25
\$20,000	19:21		17:5	analyze
5:13 26:2	22	A	additional	15:9
\$250	12:2	abilities	14:4 18:10	analyzed
15:14	24	26:5	21:4 22:10	5:23
\$30,000	10:12	absolute	23:17 24:24	analyzing
30:7	25	23:23	29:11 31:9	4:23
\$4,000	25:19	absolutely	address	Apparently
16:14	26	23:25	20:18	23:17
\$4,847	10:12 11:22	acceptable	adjudicated	appearing
27:1	30:16,17	7:1	13:11	4:14
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